United States Court of Appeals

for the Second Circuit

APPENDIX

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76-1318

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

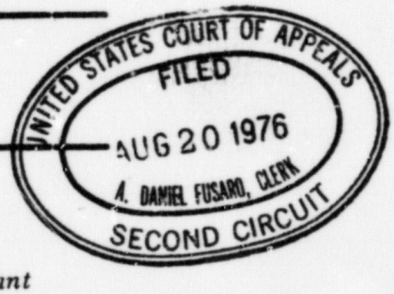
Appellee,

-against-

STEPHEN ROSENBAUM,

Appellant.

Appendix



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NOTICE OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, : 75 CR 856

-against- :

STEPHEN ROSENBAUM, : NOTICE OF MOTION

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of MICHAEL S. WASHOR, ESQ., duly affirmed to the 26th day of November, 1975, the indictment herein, and upon all the proceedings heretofore had herein, the undersigned will move this Court on the day of December, 1975, at the United States Courthouse, 225 Cadman Plaza East, Borough of Brooklyn, City and State of New York, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard before the Hon. JOHN F. DOOLING, JR., United States District Judge, for an order direct the United States Attorney for the Eastern District of New Yor furnish to the undersigned pursuant to Rule 7(f) F.R.C.P., a of Particulars as set forth herein together with relief purs to Rule 16, F.R.C.P., allowing discovery and inspection to extent hereinafter requested, and for an order dismissing within indictment, pursuant to Rule 12, subdivision b(1) F.R.C.P., and for a severance of the within counts herein

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to Rule 12 and 14, F.R.C.P., together with such other and further relief as to this Court may seem just and proper.

Dated: November 26, 1975

Yours, etc.,

MICHAEL S. WASHOR
Attorney for Defendant
Office & P. O. Address
16 Court Street
Brooklyn, New York 11241
(212) TR 5-1292

TO:

UNITED STATES ATTORNEY
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

DEMAND FOR A BILL OF PARTICULARS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, : Ind. No. 75 CR 856

-against- :

STEPHEN ROSENBAUM, :

Defendant.

- -x

The defendant, STEPHEN ROSENBAUM, through his counsel, pursuant to Rule 7(f) and Rule 16, F.R.C.P., respectfully demands the following particulars and discovery and inspection:

A. DEMAND FOR A BILL OF PARTICULARS

As to Count I:

1. State the exact date, and reasonably approximate hours of the day or evening when it will be claimed at trial that the defendant, STEPEHN ROSENBAUM, did knowingly conspire and agree to violate Title 18, U.S.C. §201.

2. State where and when it will be claimed at trial that the defendant, STEPHEN ROSENBAUM, did so conspire to violate Title 18, U.S.C. §201.

3. State the content of said alleged illegal agreement.

4. State the "goal" of said alleged illegal agreement.

5. State the benefit to have been received by said defendant, STEPHEN ROSENBAUM.

6. State the dates that the defendant, STEPHEN ROSENBAUM, allegedly entered and terminated his participation in the alleged conspiracy.

7. State the exact dates and approximate hours of the day when the defendant, STEPHEN ROSENBAUM, was allegedly in violation of Title 18, U.S.C. §201.

8. State the specific manner and form that the defendant, STEPHEN ROSENBAUM, allegedly conspired to defraud the Veterans Administration.

9. State the specific "frauds" allegedly committed by the defendant, STEPHEN ROSENBAUM, with relation to the Veterans Administration's Loan Guaranty Program.

10. State the exact or reasonably known dates, times and places wherein the defendant, STEPHEN ROSENBAUM, allegedly bribed or gave gratuities to officials of the Veterans Administration.

11. State the names and addresses of those public officials within the Veterans Administration that were the alleged recipients of bribes or gratuities.

12. State the amount of the alleged bribes or gratuities given to the public officials within the Veterans Administration by the defendant, STEPHEN ROSENBAUM.

13. State the names and addresses of the customers of Springfield Equities Ltd. on whose behalf the alleged bribes and gratuities were given by the defendant, STEPHEN ROSENBAUM.

14. State and list those particular mortgage applications submitted to the Veterans Administration by Springfield Equities Ltd. that were allegedly the predicate for the giving of bribes and gratuities.

15. State and list those premises of real property that were the subject matter of the alleged bribes and gratuities.

16. State the actual value or market value of those said real properties that allegedly were the predicate for bribes and gratuities.

17. State the amount of excessive, inflated or false values of those real properties that were allegedly the subject matter of the aforementioned bribes and gratuities.

18. State and list those applications of Springfield Equities Ltd. that were allegedly expedited relative to processing, etc.

19. State and list those applications of Springfield Equities Ltd. that contained false, misl ading, or omitted materia facts, submitted to the Veteran's Administration.

20. State and define in each application which facts were allegedly false, misleading or what material facts were omitted, re demand #19.

21. State those applications of Springfield Equities Ltd. which were the subject matter of improper assignment, processing or review of mortgage applications.

22. State which of said Springfield Equities Ltd. applications were improperly assigned, improperly processed and inproperly reviewed.

23. State the approximate date and place under Overt Act #1.

24. State the scope and sphere and substance of the discussion allegedly had, under Overt Act #1.

25. State if any third party was present or privy to the discussion allegedly held under Overt Act #1.

26. State the date, time and place of the alleged meeting under Overt Act #2.

27. State the scope and sphere and substance of the discussion allegedly had, under Overt Act #2.

28. State if any third party was present or privy to the discussion allegedly had under Overt Act #2.

29. State the date, time and place of the alleged meeting under Overt Act #3.

30. State if any third party was present or privy to the discussion allegedly had under Overt Act #3.

31. State the scope and sphere and substance of the discussion allegedly had, under Overt Act #3.

32. State the properties in question that were allegedly the subject matter of Overt Act #3.

33. State the date, time and place of the alleged meeting under Overt Act #4.

34. State if any third party was present or privy to the discussion allegedly had under Overt Act #4.

35. State the date, time and place of the alleged meeting under Overt Act #4.

36. State the time and place wherein the alleged incident occurred under Overt Act #5.

37. State if any third party was present or privy to the incident alleged under Overt Act #5.

38. State the amount of money allegedly the subject matter of Overt Act #5.

39. State where one Andrew Hahn detained said monies to deliver to one Charles Assatly, and whether it was by check or by cash, under Overt Act #5.

40. State the time and place wherein the alleged incident occurred under Overt Act #6.

41. State the scope and sphere and substance of the discussion allegedly had, under Overt Act #6.

42. State the time and place wherein the alleged incident occurred under Overt Act #7.

43. State if any third party was present or privy to the incident alleged under Overt Act #7.

44. State the scope and sphere and substance of the discussion allegedly had, under Overt Act #7.

45. State and describe the application and property in question, under Overt Act #7.

46. State the time and place wherein the alleged incident occurred under Overt Act #8.

47. State if any third party was present or privy to the incident alleged under Overt Act #8.

48. State which particular credit application is the subject matter of Overt Act #8.

49. For copy of said credit application under Overt Act #8.

50. For the names and addresses of any and all persons that were present or privy to any or all of the alleged incidents, described under all or any of the Overt Acts #1 through #8, inclusively.

51. For a list and statement as to those alleged Overt Acts that will be offered at the trial of the issues herein, not specifically enumerated in the within indictment.

52. For a list of all alleged co-conspirators known to the United States Attorney, under Count #1.

53. For a statement by the U.S. Attorney as to which of the alleged co-conspirators were to have been indicted, arrested, convicted, acquitted, sentenced; those who have "made deals" with the Government; those who have received "legal benefits" by allegedly cooperating with the Government; and those to whom any "promises" or representations were to have been made by any Court or U.S. Attorney.

As to Count II:

54. State the approximate time and place wherein the alleged act of bribery occurred.

55. State whether the monies in quedtion were in cash or check form.

56. State the source of said monies.

57. State what particular acts had been performed by one Donald Carroll for the said alleged bribe.

58. State what particular acts were to be performed by said one Donald Carroll.

59. State if any third party was present or privy to the alleged bribe, if any.

As to Count III:

60. State the date, approximate time and exact place wherein the alleged crime was to have taken place.

61. State whether the defendant, STEPHEN ROSENBAUM, offered something of value to one Rose Cohen, directly or indirectly.

62. If the answer to demand #61 is indirectly, then the name and identity of any intermediary making such alleged offer.

63. State if any third party was present or privy to the alleged transaction with one Rose Cohen.

64. State and define "something of value" that was allegedly offered to one Rose Cohen.

65. Describe the official acts of one Rose Cohen that were to be influenced and the manner in which same were so done, if at all.

66. State those applications of Springfield Equities Ltd. that were improperly assigned or improperly processed with the Federal Housing Administration.

As to Count IV:

67. State the exact date, and reasonably approximate hours of the day or evening when it will be claimed at trial that the defendant, STEPHEN ROSENBAUM, did knowingly conspire and agree to violate Title 18, U.S.C. §201.

68. State when and where it will be claimed at trial that the defendant, STEPHEN ROSENBAUM, did so conspire to violate Title 18, U.S.C. §201.

69. State and specifically describe "other things of value" alleged to have been paid to F.H.A. officials.

70. State the content of said alleged illegal agreement.

71. State the "goal" of said alleged illegal agreement.

72. State the benefit to have been received by said defendant, STEPHEN ROSENBAUM.

73. State the dates that the defendant, STEPHEN ROSENBAUM, allegedly entered and terminated his participation in the alleged conspiracy.

74. State the exact dates and approximate hours of the day when the defendant, STEPHEN ROSENBAUM, was allegedly in violation of Title 18, U.S.C. §201.

75. State the specific manner and form that the defendant, STEPHEN ROSENBAUM, allegedly conspired to defraud the F.H.A.

76. State the exact dates, times and places wherein

the defendant, STEPHEN ROSENBAUM, allegedly paid monies or other things of value to officials of the Federal Housing Administration.

77. State the names and addresses of those public officials within the Federal Housing Administration that were alleged recipeints of monies or other things of value.

78. State the amount of individual monies allegedly the subject matter herein.

79. State the monetary value of "other things of value" allegedly the subject matter herein.

80. State and name those applications of Springfield Equities Ltd. upon whose behalf the alleged illegal payments to the Federal Housing Administration were made.

81. State the approximate date and place under Overt Act #1.

82. State if any third party was present or privy to the discussion allegedly had, under Overt Act #1.

83. Name and describe the official or officials of the Federal Housing Administration under Overt Act #1.

84. State whether money or "other things of value" were given to each official of the Federal Housing Administration under Overt Act #1.

85. State the amount of money or value, monetarily, "of other things of value", given to Federal Housing Administration officials under Overt Act #1.

86. State the approximate date and place under Overt Act #1.

87. State if any third party was present or privy to the discussion allegedly had under Overt Act #1.

88. Describe the contents of the alleged list of officials of the F.H.A. under Overt Act #2.

89. For a copy of such list, enumerated in Overt Act #2, if any exists.

90. For the names and addresses of any and all persons that were present or privy to any or all of the alleged incidents described under all or any of the Overt Acts #1 and 2.

91. For a list and statement as to those alleged Overt Acts that will be offered at the trial of the issue herein, not specifically enumerated in the within indictment.

92. For a list of all alleged co-conspirators known to the United States Attorney, under Count #4.

93. For a statement by the U.S. Attorney as to which of the alleged co-conspirators were indicted, arrested, convicted, acquitted, sentenced; those who have "made deals" with the Government; those who have received "legal benefits" by allegedly cooperating with the Government; and those to whom any "promises" or representations were or have been made by any Court or U.S. AAttorney.

B. DISCOVERY AND INSPECTION

1. Pursuant to Rule 16(a)(1) F.R.C.P. , state whether any electrical or mechanical device was utilized, successfully or not, to record any conversation of the defendant, STEPHEN ROSENBAUM, giving the type and description of the device used,

and the agency or agencies using the device (whether City, State, or Federal) and/or

2. Pursuant to Rule 16(a)(1) F.R.C.P., state whether or not any authorization to use a recording device, referred to in par. 1 above, was ever obtained (§2516-2518, Title 18, U.S.C.), and if so, where, giving the full names and title of the person or persons authorizing it, and the statute or section relied upon as authority for its use.

3. Pursuant to Rule 16(a)(1) F.R.C.P., furnish a transcript of any such recording referred to in par. 1 above, or permit counsel to copy same.

4. Pursuant to Rule 16(a)(1) F.R.C.P., state whether there is any written or otherwise recorded statement made by (a) the defendant, STEPHEN ROSENBAUM, or (b) any co-conspirator, whether contained in another person's report or statement of in any other format, within the possession, custody or control of the Government, the existence of which is known to the attorney for the Government.

5. Pursuant to the above, if the answer to par. 4 above, is in the affirmative, furnish copies of such reports, statements, remarks, comments, whatever, attributed to (a) the defendant STEPHEN ROSENBAUM, and (b) any co-conspirator, whether contained in another person's report or statement or in any other format, within the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government.

6. Pursuant to Rule 16(a)(2) F.R.C.P., require the Government to furnish the results of any handwriting, fingerprints, voiceprint, photography or other scientific test or experiment that has been or will be conducted in connection with this particular case.

7. For a copy of all handwritten specimens given by the defendant to the Government during the course of the investigation herein.

8. For copies of all B.C.I. and F.B.I. record sheets of any and all witnesses that will testify on behalf of the Government at the trial herein.

9. For copies of all pertinent material, not limited to, but including, indictments, arrest complaints, Government memoranda reflecting a witness' cooperation, dates, times and places of any pleas of guilty, trials, convictions, or acquittals, of any witnesses that are to be used by the Government at the trial herein.

10. For a copy of all "3500" material, at least three weeks prior to the commencement of the trial herein.

C. EXCULPATROY RELIEF

Pursuant to the doctrine enunciated in Brady vs. Maryland, 373 U.S. 83 (1963), disclose and where appropriate, furnish copies of, any and all statements, information, or other evidence of any kind or description which could be, or is exculpatory of the defendant's alleged guilt. In this regard

the United States Attorney should be directed to disclose:

1. The name or identity and the address of each and every person who has knowledge and information concerning the alleged offenses charged in this indictment.

2. The name, identity and address of each and every person who has exculpatory information which could be helpful to the defendant in the preparation of his defense to the charge of this indictment.

3. Every exculpatory fact, circumstance, lead or evidence which the United States Attorney may know or can determine from an examination of the various investigative agencies of the United States Government which might, may, or could assist him in the preapration of his defense.

D. THE DEFENDANT WILL MOVE FOR A DISMISSAL OF THE INDICTMENT UPON THE GROUNDS THAT THE DEFENDANT HAS BEEN DENIED DUE PROCESS AND ERGO A SPEEDY TRIAL, IN VIOLATION OF THE 14th AND 6th AMENDMENTS TO THE U.S. CONSTITUTION.

E. THE DEFENDANT WILL MOVE FOR A SEVERANCE OF THE WITHIN COUNTS OF THE INDICTMENT UPON THE GROUNDS THAT THERE IS AN IMPROPER JOINDER AND MOVES TO COMPEL THE GOVERNMENT TO ELECT THE COUNTS UPON WHICH IT DESIRES TO PROCEED.

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AFFIRMATION OF MICHAEL S. WASHOR IN SUPPORT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

-against- :

STEPHEN ROSENBAUM, :

Defendant :

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

MICHAEL S. WASHOR, an attorney admitted to practice Law in the State of New York, hereby affirms the following under penalty of perjury:

That I am the attorney for the above-named defendant, STEPHEN ROSENBAUM, and make this affirmation in support of the relief requested in the annexed notice of motion.

1. AS TO THE MOTION TO DISMISS UPON THE GROUNDS OF A VIOLATION OF DUE PROCESS AND DENIAL OF A SPEEDY TRIAL.

In order to better understand the Supreme Court of the United States' mandates in U.S. v. Marion, (40" U.S. 307) as applicable herein, a factual background of the investigatory stages must be alluded to

In March 1972, the defendant, STEPHEN ROSENBAUM, was notified of the impending investigation. He immediately retained counsel and paid a fee , through his firm, Springfield Equities,

Ltd., in the sum of $16,500. Having been therein advised that he was the target of investigation and would "soon" be indicted, the defendant, became severely ill, only to be hospitalized for a protracted period of time.

Soon thereafter, in July 1972, Mr. Rosenbaum retained present counsel without the return of any monies from his prior attorneys. Your deponent had several conferences with the U.S. Attorney's office which precipated itself into a subpoena for the defendant to appear before the Grand Jury in November, 1972. When the defendant did actually make his appearance before the Grand Jury, he invoked his privilege under the 5th Amendment of the Constitution. Said subpoena was continued in effect subject to defense counsel's and Government counsel's agreement that Mr. Rosenbaum would appear when orally notified by his attorney.

Following then, in November 1972, the accused was requested (directed) to furnish his handwriting in the form of providing exemplars.

Thereafter, numerous conferences were had between defense counsel and Chief of the Criminal Division of the U.S. Attorney's office for the Eastern District of New York.

All through this hiatus of time, the result of the discussions were brought to the defendant's attention as well as the fact that an indictment was imminent and forthcoming.

At about the time of the rendering of his own handwriting exemplars to the Government, the defendant expressed a

desire to possibly appear before and perpetuate testimony before the Grand Jury. This request was respected by the U.S. Attorney's office even as late as Mid-September, 1975. The defendant, however, on the advice of his attorney, exercised his right not to testify without the granting of immunity.

Also, during this same period of time in January 1975, defendant's real estate license was revoked, after a hearing. Said matter is presently in the appellate process.

At or about the time that he was apprised the investigation would probably mature into an indictment, the defendant's business--Springfield Equities Ltd.--began termination; in a reasonable period of time, by October, 1972, the actual business concluded and liquidation of assets was then the natural consequence.

For aperiod of time, approximately two years, the defendant was deprived of a livelihood and the eventual revocation of his real estate license only further complicated his financial status.

During the pendency of the initial stage of investigation, purusant to a continuing subpoena and continuing acquiescence by defense counsel, documents of every kind and nature related to the defendant as well as to Springfield Equities, Ltd., were turned over and made available to the Government.

Finally, many documents once available, are no longer to be found nor in the custody nor control of the defendant.

Several witnesses, once available for the defense are now deceased.

In U.S. v. Marion, supra, the Supreme Court firmly established the rule that a defendant becomes an "accused" within the meaning of the Sixth Amendment where there is:

> ". . .either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment."

This, of course, defines the Sixth Amendment applicability in most instances. However, a denial of due process via the 14th Amendment, as a result of a pre-indictment delay can mature into a denial of the speedy trial doctrine.

Surely, being subject to and under subpoena, both, in personam and duces tecum, by actual service, continuing efficacy, and engagement or acquiescence by the accused, renders the defendant subject to due process violations related to pre-arrest or pre-indictment delay; this is enhanced by the accused being advised that 3 1/2 years ago he was the "target" of the investigation. Couple these factors with the incidents wherein the defendant was caused to provide numerous documents as well as handwriting specimens to the Government, leads to the inescapable conclusion that the defendant's liberty was well under legal restraint.

Furthermore, it is recognized that an indictment can survive both speedy trial and due process attack via the filing of

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such instrument within the period of the Statute of Limitations, unless actual prejudice is demonstrated. In Marion, supra, the the Supreme Court specifically left open the opinion that upon a showing of "actual prejudice" stemming from pre-indictment delay, dismissal may well be required under the due process clause. (See also, U.S. v. Schwartz, 464 F. 2d 499).

Then in Barker v. Wingo (407 U.S. 514), the Supreme Court listed four factors to be considered when determining a claim of a denial of a speedy trial. The length of delay, the reason for the delay, the accused's assertion of his right before trial, and the degree of perjudice to the defendant's case. Applying the "Wingo" test herein, the length of delay is appalling- 3 3/4 years or more. The reason for the delay cannot be truly investigative since most of the material in control of the Government now, has been in their grasp from the inception. Further, understaffing or overburdensome work load is not a legal excuse (Strunk v. U.S., [illegible] Cr L3139). In Strunk, supra, the Court stated, with reference to the lower Court's decision:

> "The Court of Appeals. . .also rejected the lack of staff personnel in the United States Attorney's Office as a justification for the delay.

It is also suggested that even Court congestion or overload of cases will not defeat the speedy trial right. (U.S. v. West, 504 F. 2d 253).

Then, the defendant is raising the legal issue at the first opportunity afforded him. The degree of prejudice to the

defendant herein has in part been demonstrated; further consideration should be given to the accused herein when one realizes the anxiety and apprehension and psychological effects that have hindered the defendant. The suffering and anticipation for such a lengthy period of time is not to be lightly considered. The Supreme Court stated, in no uncertain words, in Strunk, supra,

> "The speedy trial guarantee recognizes that a prolonged delay may subject the accused to an emotional stress that can be presumed... from uncertainties in the prospect of facing public trial. . ."

The maintaining of a livelihood, supporting a wife and two children, the loss of one's father and brother-in-law and added financial and moral obligation of aiding one's sister and nieces and nephews, create such emotional stress so as to constitute irreputable harm and damage.

Further, the defendant has been admonished that in the near future, he will be indicted for I.R.S. violations. Even further demonstrative of the emotional strain and prejudice to the accused, on the defendant's very day of arraignment, November 24, 1975, his father-in-law, who resided with him and his wife for 19 years, and who was privy to the defendant's business and financial activities, was interred, having died just two days prior thereto.

In determining the degree of prejudice occasioned the defendant by this unreasonable three and three quarter years' delay, the Court should recognize that the defendant's children

both 14 and 17 years of age, have had to bear the burden of most unkind and most unfavorable criticism from their own peers; the numerous "disturbing" phone calls to the defendant's home and particularly to his wife; constant harrassing his family; the fact that the accused was unable to find business opportunities due to the "threat" of impending indictment; many of the defendant's associates were most concerned that attendant to an indictment would follow much unfavorable publicity and there was, therefore, little desire, if any at all, to become affiliated with the defendant; notwithstanding the presence of other considerations that would normally induce a healthy business relationship. The unfavorable and adverse publicity actually preceded the indictment by releases to various newspapers.

Finally, this Court's attention is drawn to the fact that many witnesses for the defense, once available and voluntarily helpful to the defense are now deceased.

Many of these persons have spoken to the defendant and your deponent, advising us of potentially necessary and favorable testimony that might have been perpetuated on behalf of the defendant.

Some of the "brokers" who once were available and could shed light on several instances related directly to the counts of the within indictment are now deceased: Mr. Mack Roberts; Mr. Louis Solomon; Mr. Murray Levoy; and Mr. Paul Levins.

As a part of the Government's claim, evidence will be produced demonstrating the alleged illegal business operations with brokers known as the "Smith Brothers". During this

unreasonable period of daly, two most important witnesses came forth to the defendant and expressed their willingness to aid and shed light on the "Smith" transactions: Mr. Herman Keller, an attorney, and Ed Gordon, Esq., who was the actual attorney for the "Smiths," are now deceased.

Relative to the conspiracy charges, several witnesses, once having indicated favorable and exculpatory matter, concerning the defendant's relationship with the Veterans Administration and Federal Housing Authority are not available and not to be located. At the least, they are nowhere in the jurisdiction: Mr. Al Bernstein, Mr. C. Drago, Mr. Monroe Kaufman, Mr. Sol Fox, Mr. Fernando Arias and Mr. Michael Fox.

Lastly, as demonstrative of the loss of most important material to the defense was the recent deaths of the defendant's father-in-law and brother-in-law, Mr. Neil Lustig. The latter had conversed with one Douglas Holmberg and conveyed to the defense the following information: that when Douglas Holmberg initially spoke to the F.B.I., he did not in any manner or form inculpate the defendant. Thereafter, because of his own personal improprieties and problems, in order to extricate himself, he "lied" to the authorities and implicated many persons including the defendant. It was further related that he had seen an F.B.I. report disclosing his denial of impropriety re: defendant Rosenbaum (probably part of the present "3500" material) These witnesses that were available to contradict the very essence of the charges are no longer present for the defense.

This is not to argue that the Government is directly responsible for the existence of such personal problems, but to have waited so unreasonable a period of time to bring about a prosecution, is somewhat like capitalizing on the very unfortunate events that normally appears in one's life. Had a prosecution been instituted in a timely fashion, all the legal problems would have been faced and met on a less strained emotional level without the devastating effect had herein, and would have been terminated by this time, one way or the other.

This Court should bear in mind that it is the Constitution that guarantees a speedy trial (U.S. Const., 6th and 14th Amendments) and not merely case law (Dickey v. Florida, 398 U.S. 30; Smith v. Hocey, 393 U.S. 374).

Again, realistically, the prosecutorial delay has hampered the defendant's being able to call certain witnesses, and the duration of delay is such that it might well be expected that what few witnesses are remaining, will be less able to articulate exactly what had transpired 3 3/4 years ago. This, of course, is equally applicable to the accused himself. The delay herein occurred prior to indictment, and there was no end in sight. Certainly, any open-ended delay occurring at the outset of the criminal proceedings must necessarily weigh more heavily against the Prosecution than a similar delay occurring during the final stages when the criminal process is nearing completion.

Eight known material witnesses for the defense are dead; six known material witnesses for the defense are not within

the jurisdiction and have not been located by superficial inquiry; 3 3/4 years have elapsed from the incidents under investigation having been brought to the attention of the defendant; memories tend to lapse and present articulation of "aged" incidents seem most unlikely to be met with any degree of accuracy; time, money, emotional and psychological strain have taken a tremendous toll on the defendant. Prejudice is oft times inferred. Herein, prejudice is real, actual, demonstrative, and most apparent.

2. AS TO A MOTION FOR A BILL OF PARTICULARS

It is respectfully pointed out to the Court that the particulars requested from the United States Attorney are necessary and essential in the preparation of the defense to the indictment at bar. Although the indictment, containing several counts therein, set forth the statutory language apprising the defendant of the charges pending against him, they are insufficient as a matter of law to enable the defendant to properly prepare his defense herein. Because of the numerous objects and wide latitude allowed the Government in the presentation of its proof,

the defendant is at a distinct and prejudicial disadvantage unless he is advised with particularity of his particular participation in the crimes charged.

It is essential for the defendant to know with definiteness and accuracy the answers to each and all of the particulars requested by him, to the end that they may fairly reach the allegations of the indictment. It is further essential and necessary, in the interests of Justice, to place the defendant in parity with the Government, so that the defendant be definitely informed by means of the answers to all of the particulars demanded, so that there will be no surprise at the trial, and that the trial will not be delayed due to a motion that the defendant might be compelled to make during the trial for a continuance to give him a fair opportunity to investigate and enable him to meet such testimony.

That the items sought by the defendant herein are both reasonable and fair, and do not place the Government in any position wherein they would be exposing evidentiary matter prior to the time of trial.

This Court should recognize that the Government has had the advantage of preparing the materials for the within indictment for more than three years. Most, if not all, the documents in question have been in the custody or control of the Government for at least that hiatus of time. The long period of time herein having elapsed, prohibits the defendant herein from accurately

recalling, dates, times, places and surrounding incidents thereto, related to the crimes charged.

The trial purports to be a search for the truth. The defendant should then be given the particulars requested so that he will have a reasonable opportunity to meet the allegations contained in the indictment and thus prevent the instant trial from becoming either a "game of chance" or an endurance contest. Your affiant has reason to believe that there may well be approximately 30 Government witnesses and an unbelievable quantity of documentary evidence offered by the Government. To impose upon the defense a disclosure of said material at or on the eve of trial serves little or no purpose whatsoever, except to hamper and overburden the said defense. It is literally and realistically impossible to evaluate and digest this quantum of material on the eve of trial or during the trial. It further has a chilling effect on the defendant's constitutional right to have "effective assistance" of counsel.

3. AS TO THE REQUEST FOR A DISCOVERY AND INSPECTION

Rule 16A of the Federal Rules of Criminal Procedure permit the Courts to grant the defendant's application for a discovery and inspection of any written or recorded statements or confessions made by the defendant.

It is submitted that the Court should exercise its discretion in the instant case, so that the defendant may properly ascertain the merits of his defense within the purvue of any and

all statements made by him at or about the time of the alleged commission of the crimes charged.

Rule 16E of the Federal Rules of Criminal Procedure permits the Courts to grant the defendant's application for a discovery and inspection of all witnesses to be proferred by the Government at the trial herein.

It is submitted that the Court should exercise its discretion in this instance so that the accused may properly investigate and ascertain the merits of any and all motions to be made en futuro.

While your affiant realizes that there is no legal obligation upon the U.S. Attorney to furnish the "3500" material to the defense until after each witness has completed their respective direct testimony, your affiant has learned through the good graces of the U.S. Attorney's office, that just some of the "3500" material will take weeks to peruse, analyse, evaluate, and digest. Again, this very problem cannot be met by mere technicalities and providing such quantity of material, at or during trial will act to deprive the defendant of a reasonable opportunity to prepare his defense. Delay, occasioned during the trial, does not serve the purpose affording the defense an opportunity to peruse the "3500" material; the anticipated delay occasioned by the anticipated quantity of material will interrupt the trial for a sufficient length of time to work a denial of fair and impartial trial. The prejudice created will be far too great to overcome.

4. AS TO THE MOTION FOR A SEVERANCE OF THE WITHIN COUNTS OF THE INDICTMENT, ETC.

Counts I and II, respectively, charge the crimes of conspiracy (Title 18, U.S.C. 371) and Bribery (Title 18, U.S.C. §201(f)) in that the actions and conduct of the defendant, STEPHEN ROSENBAUM, violated the aforementioned statutes relating to "business" dealings by him, his firm, Springfield Equities Ltd., and officers of the Federal Housing Administration.

Counts III and IV, respectively, charge the crimes of Bribery and Conspiracy, in that the actions and conduct of defendant and his firm violated said statutes in relation to his "business" dealings with the Veterans Administration and its officials.

It should be apparent that the conspiratorial charges as well as the substantive charges relate to separate and distinct agencies involving the Federal Government.

It is submitted that this joinder is improper and will require proof of variance evidence to the charges which constitutes a denial of due process (Berger v. U.S., 295 U.S. 78; Kotteakos v. U.S., 328 U.S. 750; Federal Treatment of Multiple Conspiracies, 57 Colum. L. Rev. 387, 396 (1957)). It is not the mere variance of proof but such variance that might effect the substantial rights of the accused. In U.S. v. Martinez-Gonzales, (89 F. Supp. 636), the Court held that such misjoinder invalidated the indictment.

Assuming, arguendo, that evidence related to Counts II and III reach the proportion of guilt beyond a reasonable doubt, it is urged that there will be no evidence linking them together or linking each respectively to Counts I and IV. This then will only provide "spill-over" effect to the legal impediment of the defendant. (See U.S. v. Miley, 513 F. 2d 1191; U.S. v. Butler, 494 F. 2d 1246). The only nexus between the counts is the defendant and separate, distinct officials of both the Federal Housing Administration and Veteran's Administration. It is this type of nexus that should be insufficient to permit a joinder herein. (See U.S. v. Kotteakos, supra, pgs. 773-74.)

It is evident to your affiant that the Government has merged the within four counts into one indictment, not only for the sake of convenience, but also to obtain the distinct advantage of submitting quantity evidence without real regard to quality evidence. The combining of the several offenses herein will greatly enhance the chances of conviction as to one charge.

The more precise issue is whether the "spill-over" evidence as to any one count to another or other counts will create such prejudice as to constitute a transference of guilt from one phase of testimonial evidence to another, without actually establishing the other crimes charged. Your affirmant is mindful that oft times, the Court can render instructions to the jury to obviate the implied prejudice; however, in the case at bar, it is most doubtful that a lay jury could differentiate

between the evidence presented and avoid the illegal spill-over effect anticipated. Rhetorically, is it reasonable to expect a lay jury to draw the distinction between conspiracy and bribery of a public official of the Federal Housing Administration and the same crimes related to the Veterans Administration? If the Government should establish the defendant's guilt as to any of the four crimes charged, it is unlikely that such a lay jury would not reason out and infere that guilt of the accused in conspiring or bribing a Veterans Administration official inferentially establishes the accused's guilt of either conspiring or bribing an F.H.A. official. This spill-over effect is insurmountable and cannot be cured by Court instruction or admonishment. To even attempt to protect this situation would be paramount to accentuating the very prejudicial problem that is sought to be relieved.

In U.S. v. Bertolotti, _____F 2d____. (decided November 10, 1975, 2nd Circuit), the Court stated:

> "The possibilities of spill-over effect from testimony on these transactions are patent when. . .volume of evidence are weighed against the ability of the jury to give each defendant the individual consideration our system requires."

For expediency purposes, joinder of separate but related crimes is legally permissible. But this Court should be alerted to the inherent dangers of combining unrelated criminal acts under the roof of an alleged single indictment by the guise of a common plan or scheme.

Joinder is not permissible where the offenses are

of similar character. (see Drew v. U.S., 331 F 2d 85; Pummill v. U.S., 297 F. 2d 34; Patterson v. U.S., 324 F 2d 310).

To further augment the defense position, this Court's attention is directed to the legal proposition that it is encumbent that the Government must establish a "specific" intent to violate the stbstantive statute, where a conspiracy is also charged. (U.S. v. Congiaro, 491 F. 2d 906). In a matter of this magnitude, while the Court and the adversaries can or should appreciate these very important legal technicalities, they serve merely as a catalyst to jury confusion and jury misunderstanding.

This Court's attention is once more drawn to the hearsay exceptions or admissibility as to Count I related to the Federal Housing Administration and such prejudicial spill-over effect as to Count IV related to the Veterans Administration; the converse is also true. It is problem enough for both Court and accused to deal with the hearsay exception rule when confined to a singly charged conspiracy and substantive count. At the within trial, in its present posture, these legal and practical problems become manifold. The end result of prejudicial effect to the accused is so devastating that the interests of justice should demand a severance herein.

Dated: Brooklyn, New York
November 26, 1975

Michael S. Washor

MICHAEL S. WASHOR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

-against- : 75 CR 856

STEPHEN ROSENBAUM, :

Defendant. : AFFIDAVIT

- -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

MICHAEL WASHOR, ESQ., being duly sworn, deposes and says:

1. I am the attorney representing the defendant, STEPHEN ROSENBAUM, in the above-captioned matter.

2. I am making this supplemental affidavit in support of the motion to dismiss the within indictment on the grounds of a denial of due process and denial of a speedy trial.

3. Submitted herewith are affidavits of the defendant, STEPHEN ROSENBAUM, and RAMOND B. GRUNEWALD, ESQ.

4. The affidavit of RAMOND B. GRUNEWALD, ESQ., demonstrates that the Government possessed more than adequate information and facts as early as June 1972, to justify the finding of an indictment. Actually, the Government merely alerted the defendant in June 1972 of the nature and scope of its investigation. Quite obviously, as early as February 1972, the Government possessed hard facts related to the charges contained in Count Two of the within indictment. Again it is also evident that in March of 1972 the Government had more than adequate quantum of evidence to pro-

ceed to indictment as disclosed by Overt Act No. 8 under Count 1 and the revelation of the existence of body tapes and transistor tapes in the F.B.I's possession related to a transaction dated March 23, 1972. Further, all dates revealed by the overt acts under both conspiracy counts reflect Governmental information back to 1971, January 1972, February 1972, and March 1972. Finally, it is urged that the Government had obtained the allegation contained in Count III prior to the "Eastern" trial as Rose Cohen was a Government witness therein. The "Eastern" indictment was found in early 1972.

5. The Government disclosed the existence of tapes, names of brokers and the approximate number of alleged "phony" purchasers (5) and the fact that high Veterans Administration and Federal Housing Administration officials were cooperating with the Government.

6. The Government offered to dispose of the matter with a felony plea. It is urged that the felony plea was made in good faith by the Government. That "good faith" purports to mean the existence of legally sound evidence to substantiate the acceptance of a felony plea.

7. Lastly, the Government demonstrated that it was ready to proceed to indictment and would cause only a minimal delay to accommodate Mr. Grunewald personally. The indictment was expected in late July or immediately thereafter.

8. It becomes apparent that from February 1972, through November 13, 1975, there is little if any reasonable excuse for

such unreasonable and lengthy delay.

9. The affidavit of STEPHEN ROSENBAUM, details the nature and scope of actual prejudice that has occurred during the within unreasonable delay. It is urged that most of the now deceased witnesses and now "missing" witnesses would have been of great value to the defense. Firstly, many important Government witnesses tainted with immunization deals, reduced pleas, lessor sentences, etc., would have been met head on by direct contradictions of their actions and conduct. Secondly, these very witnesses would have been corroborative of the defendant's account of many of the instances in question. Surely, the quality and quantity of these defense witnesses would have created a substantial jury question as to the defendant's criminal intent as well as to the defendant's actual guilt or innocence. Some say that even David and Goliath were evenly matched. Yet. without his sling shot, what real chance would he have had? Similarly, the defendant, by the presumption of innocence is in parity with the Government; yet without the defense witnesses, the slaughter becomes evident.

10. Had the Government, by due diligence, acted properly and brought about an indictment in August or September 1972, then the ensuing trial would have been truly a "search for the truth." In the present posture, because of the unreasonable delay and inherent and apparent prejudice to the defense, there seems little hope that a trial will result in a just verdict.

11. The four criteria of Barker v. Wingo, (407 U.S. 514,

1972), to wit: (A) the length of delay; (B) the reason for delay; (C) the accused's assertion of his right and (D) the prejudice to the accused, have been met. The length of delay is 3 3/4 years; there is no justifiable reason for the delay; the defendant has asserted his right at the very first legal opportunity; and the prejudice has been adequately demonstrated.

Since Barker, supra, the Supreme Court has considered the speedy trial right in Strunk v. U.S. (412 U.S. 434, 1973) and Moore v. Arizona, (414 U.S. 25, 1973). In Strunk, supra, the Court held that where the speedy trial right has been abridged, the Constitution required dismissal of the criminal charges with prejudice. In Moore, supra, the Court explained that an accused was not required to even prove impairment of his defense as a prerequisite to obtaining relief.

12. Further, in U.S. v. Rucker (464 F. 2d 823, D.C. Cir. 1972) cited in Approval in U.S. v. Perry (353 F. Supp. 1235, D.D.C. 1973) the onus was placed upon the prosecution to provide justification for the delay, the Court stating at page 825:

> "The burden of which increases with the length of the delay."

It is obvious that the greater the length of delay, the greater weight it should be accorded in the defendant's favor.

13. In U.S. v. Canty (469 F. 2d 114, D.C. Cir. 1972) while the Court refused to dismiss the indictment, the Court stated that when a Government-caused delay was partially excusable, even then a defendant may be discharged had he incurred substantial prejudice.

14. In U.S. v. Perry, supra, the defendant was discharged because there was presumed to be a "reasonable possibility of significant prejudice" due to a three year delay.

15. The Court in Barker, supra, stated

> "Of these interests the most serious is the last (impairment of defense), because the inability of a defendant adequately to prepare his case skews the fairness of the entire system, if witnesses die or disappear during a delay, the prejudice is obvious." (Emphasis supplied).

In November 1973, in Moore v. Arizona, supra, the Court said that Barker, at page 26:

> "Expressly rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of the Constitutional right to a speedy trial."

16. Finally, in U.S. v. Macino, (486 F. 2d 750, 7th Cir. 1973), a situation occurred that demonstrates the interwining of a speedy trial right and a due process claim. The delay in Macino, supra, was 28 months; the co-defendant died during the delay; there was no evidence that his testimony would have been helpful to the defense; yet, the Court felt that the death of such a witness, with first hand knowledge of the events at issue, created a strong possibility of prejudice.

17. By analogy, the now deceased and now missing witnesses for the defense would have directly attacked most, if not all, the Government claims; at the very least, the jury could have had the benefit of such testimony to weigh in their deliberations.

18. The Government has argued that the within prosecution is timely as being within the Statute of Limitations. I humbly urge this Court to consider that the Statute of Limitations

is not a governmental tool or wedge to be used at random as an excuse for abridging the right to a speedy trial or denial of due process. The Government's claim is specious. It undermines the rationale of the constitutional mandates. The frame work established by the Statute of Limitations is to prevent stale prosecutions and unfair and undue prejudice to an accused. If by the Government's own conduct it accomplishes the very same prejudice and inherent unfairness to an accused, to allow the Statute of Limitations to defeat the instant motion, would be condoning Governmental abuses and allowing the Government to do indirectly that which they cannot do directly by law.

WHEREFORE, your deponent requests the instant motion be granted in its entirety, that the indictment be dismissed, and the defendant be discharged.

MICAHEL S. WASHOR

Sworn to before me this 3rd day of February, 1976.

M. MARC SPAR
Notary Public, State of New York
No. 30-3777700 Qual. in Nassau Co.
Commission Expires March 30, 1977

AFFIDAVIT OF STEPHEN ROSENBAUM IN SUPPORT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, : 75 CR 856

-against- :

STEPHEN ROSENBAUM, : AFFIDAVIT

Defendant. :

- - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

STEPHEN ROSENBAUM, being duly sworn, deposes and says:

I. I am the defendant, above named, and make this affidavit in support of the motion to dismiss the within indictment on the grounds that I have been denied the constitutional right to a speedy trial and due process.

2. That as a result of the undue delay by the Government in bringing about the within indictment, I have suffered irreputable harm, damage and prejudice, in that several witness, who could have testified on my behalf and proferred favorable testimony are now either deceased or nowhere to be found. That these witnesses were most important to the defense of my case herein.

3. In the latter part of 1971, I had a conference and discussion with Anne Fromman, known as Ortrud Kapraki; this occurred in my office and Mr. Mack Roberts, a broker-speculator, was present thereat. I told Anne Fromman that my company could not do

any further business with her because she was a poor financial risk and that her several negotiated loans in the past had gone bad. She cried, begged and complained that everyone in the industry was leaving her out because of the Eastern SErvice Corp. rumor that she was a Government witness; she actually admitted she was a Government witness and explained that she had the U.S. Attorney's permission to continue in the business." I told her that I would think about it and she left. Afterwards, Mr. Roberts told me that I would be crazy to do any business with her and further stated, that he would have to reconsider doing business with me if I kept her as a client. Notwithstanding, I felt sorry for Fromman, and in fact did some business with her thereafter.

4. In early 1971, my company, Springfield Equities Ltd. discontinued all business relations with the "Smith Brothers", who were brokers. Mr. Ed Gordon, who was their attorney, and who represented other brokers and individual purchasers of real estate, told me that the "Smiths" were involved in many shady deals--this exchange occurred on my promise not to tell the "Smiths" what their own attorney had said about them. Gordon, further explained that someone with my company was "shaking down" some of the brokers we were doing business with, but would not reveal the name. He expressed how lucky and smart I was to have severed any relations with the "Smiths."

5. In late 1971, Louis Solomon, an employee of mine, both as a solicitor and overseer of F.H.A. inspection work, told me that Doug Holmberg was a thief and had extorted money from brokers.

He explained that Holmberg was asking and taking monies on the representation that favorable inspection assignments would be had. Mr. Solomon had been present on one occasion when Holmberg obtained such illegal money from a broker; Holmberg said that he knew he would be "canned"-fired-if I found out what he had done and requested Solomon to keep quiet about the incident and say nothing to anyone, with his own promise that he would deter all such future activities. Mr. Solomon explained to me that he waited until Holmberg had left the company before telling of the incident because he was torn between becoming an informer and the responsibility of the loss of Holmberg's job.

Sometime later, Holmberg sent a reference form to me for either a license or a new job, which I refused to comply with, still being most annoyed at what I learned about him from Mr. Solomon.

6. In the latter part of 1973, or early 1974, I met with Murray Levoy, a broker. We discussed why he had done so little business with my company, which was dissolved in October, 1972. Mr. Levoy related that Andy Hahn had bragged to him that he could "handle" the Veterans Administration; that for just "small amounts" things could be accomplished. Levoy asked Hahn if the bosses (myself and partners) knew of these things and explained that we were too busy to be bothered with such incidentals. Mr. Levoy, knowing of my plight of no business, no company, and no income, offered me employment, notwithstanding the fact that I

was under Governmental investigation.

7. Mr. Paul Levine, sometime in September, 1973, had discussions with Adolpho Farinella about myself and my company. Farinella told Levine that I was "stupid" not to have known about Hahn and Holmberg, and all their improprieties. That when Hahn or Holmberg did business with Farinella, they agreed not to allow myself or my partners to learn of their improprieties. They discussed how to obtain expense monies without arising any of my suspicions; they agreed that they would not ask me for cash and just seek checks for out of pocket expenses, no matter how exorbitant in amount; their feeling was that I would always be too busy to actually question the amounts--especially if they asked for checks; this, they agreed, would keep me "off guard."

8. Neil Lustig, my brother-in-law and business associate, was present at Springfield Equities, Ltd. opening party in December 1970. At said party, many officials of the Veterans Administration and employees of the Federal Housing Authority attended. Lustig was in a room with Hugh McDonald and myself alone, when McDonald actually solicited a gift from me. Days later, I told Lustig how I detested the Federal Housing Authority and the Veterans Administration personnel and would promise them the world but give them nothing.

Mr. Lustig also had occasion to speak with Doug Holmberg who revealed that at first he, Holmberg, had denied any involvement of myself with any improprieties; later on, because of

self preservation, he lied to the F.B.I. and inculpated me--but I had nothing to worry about because he had seen an F.B.I. report demonstrating a denial.

In late October or early November 1970, I was with Mr. Lustig at the Federal Housing Authority Building Restaurant. Sitting alone was Rose Cohen. We both joined her for lunch (I eventually paid the check). We discussed the upcoming opening party without specific date and Cohen was told that we would call her and have her invited. I do not recall if she was actually at the party. Rose Cohen indicated that since I was going into new ventures it would be to my benefit to keep in contact with her. This was the only time I was in her company and never met her again other than in passing at the Federal Housing Authority offices. I honestly believe that I never even spoke to her afterwards.

Mr. Lustig also knew Mr. Kessler and Mr. Orlorff, both personally and professionally. In 1971, Mr. Lustig had discussions with them, individually, as to why he and I were not partners as we were so close. Both men told Lustig that I was the only one in the business that was "100%" clean. They told Lustig that I was not a "businessman" and would always have difficulty with my competition. They commented that the industry needed a few men like myself, to keep things on the level.

Also in 1971, Lustig was present at an incident involving Mr. Orlorff. Springfield Equities Ltd. did not obtain an insurance certificate on a particular case because of a complaint to the Veterans Administration, involving incomplete work. ~~I actually~~

I actually repreimanded Orlorf and questioned how he could write off the work and allow and permit my company to close a loan under circumstances where work was still to be completed.

9. Herman Gelman, my father-in-law, who lived with me and was retired, was present at an incident including Donald Carrol. In ~~late~~ EARLY 1972, Don Carrol called my home--he spoke to Gelman and was invited over to the house. Gelman knew Carrol, also, for many years. When I came home that night, Carrol was in the den with Gelman. There was at least an hour's discussion thereafter. Carrol told us of his "big" problem with the bank; he had issued an illegal commitment in reference to Sparticus Securities Corp.; he related many details to us; he said he needed $20,000 to straighten it all out. The bank President, Jerry Auci, told him he would be exposed unless the bank recovered. Carrol told us that everyone he had gone to see came up "lame" because of his high position in the Federal Housing Authority. We further discussed what impropriety there would be if I showed a loan to a Federal Housing Authority official. We discussed Gelman making a loan instead of myself. We left off with the fact that I would discuss the matter further with my partners and get back to him. Carrol pleaded with me to help him, at least in some amount; he said that every little bit would help.

10. Al Bennstein, my former partner, left the business in 1970. He had previously loaned Don Carrol money when Carrol was employed at Kings Laffyette Bank, in Brooklyn. There existed a note that was destroyed when Carrol paid the money back.

11. Osneg o Drago, a broker, had discussed contacts with me in regard to the Federal Housing Authority. He told me

that I was one of the few men that was "100%" legitimate and that he would be happy to do business with me and my company.

12. Monroe Kaufman, a broker, expressed to me how pleased he was doing business with us in contrast with the many other "big" shots in the industry.

13. Sol Fox, a speculator, investor, and broker, was stopped by my company in many cases because of improprieties. I did not certify his matters until all the incomplete work was finished. While this was quite a nuisance to him, he marveled at my integrity and the fact that I refused to do what the others were doing in the industry.

14. Fernando Arias, real estate broker, was present on at least two or three occasions when the "Smith" brothers and myself discussed monies for appraisers. I had told the "Smiths" that I would not be involved in such illegalities and I thought the whole thing would turn into a monster. I explained that such appraisal was subject to scrutiny by supervisors and any involvement would lead to "trouble".

15. Louis Solomon told me he would contact Herman Keller, who was an active attorney for several brokers and investors. Solomon told me that Keller related the Holmberg story to him, more particularly, that Holmberg was fired by Sirote and Company because he was considered a "shake down" artist. Unfortunately, Keller had died before I spoke to him about this matter.

16. Neil Lustig died on March 24, 1975.

17. Herman Gelman died on November 22, 1975.

18. Paul Levine died on January 6, 1975.

19. Murray Levoy died on August 18, 1975.

20. Louis Solomon died on March 16, 1972.

21. Ed Gordon died in January 1972.

22. Mack Roberts died in December 1971 or January 1972.

23. Herman Keller died in the summer of 1971.

24. Bernstein, Drago, Kaufman, Fox and Arias, are not listed in the telephone directories of New York City. Checks with the gas companies and electric companies and local post offices fail to reveal their present locations.

25. All or most of the people alluded to above, I feel, would have come forward to testify at my trial, either voluntarily or by subpoena.

26. I have communicated all of the above-mentioned circumstances to my attorney, MICHAEL WASHOR, during the pendency of the investigation.

STEPHEN ROSENBAUM

Sworn to before me this 3rd
day of February, 1976.

Notary Public

M. MARC SFAR
Notary Public, State of New York
No. 30-5777700 Qual. in Nassau Co.
Commission Expires March 30, 1977

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA, : 75 CR 856

-against- :

STEPHEN ROSENBAUM, : AFFIDAVIT

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss..
COUNTY OF KINGS)

RAYMOND B. GRUNEWALD, ESQ., being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York, and the Federal Eastern District Court for New York.

2. That sometime in October 1971, I was consulted by STEPHEN ROSENBAUM of Springfield Equities Ltd., with reference to potential problems that might exist with the Federal Housing Authority and Veterans Administration violations.

3. That thereafter, several conferences and discussions followed and on June 16, 1972, my associate and partner, Mr. Norman Turk, was in contact with the United States Attorney's office, one Mr. Anthony Accetta.

4. On June 16, 1972, a search warrant was executed at Springfield Equities Ltd; thereafter, having been advised of the execution of a search warrant, Mr. Turk met with and conferred

with Anthony Accetta, Assistant U.S. Attorney. The substance of that conversation is contained in a file memo, a photocopy of same being annexed hereto and made a part hereof, as Exhibit A.

5. Thereafter, on June 22, 1972, I conferred with Assistant U.S. Attorneys Anthony Accetta and Gavin Scotti, in the presence of my associate, Michael Gillen. File memorandum was prepared relating to the one hour conference had herein. The substance of said conference is as follows:

That the investigation concerned a few Veterans Administration files and the Government had tapes with respect to one transaction.

That Stephen Rosenbaum is the investigative subject of some 50 to 60 odd cases and that the company is also a "target."

That the Government has two, three, four or five people testifying, who were phony buyers set up by Springfield.

That a felony plea was offered by the Government and counteroffers of a misdemeanor would not be considered at that time.

That the Government had an investigator from the Veterans Administration "talking."

The Government disclosed that Thomas Jones, an alleged prosepctive buyer with Springfield Equities Ltd. was an agent of the F.B.I. That there existed tape conversations with Agent Jones and Stephen Rosenbaum; the electronic surveillance included both a body tape as well as a transmitter. The Government even offered "extracts" of the conversation and Mr. Accetta cited several

examples of the alleged illegal conversations.

The Government suggested having Mr. Rosenbaum alerted to Amos and Alonzo Simth, brokers who had done business with Springfield Equities Ltd.

The Government had not at that moment decided whether or not to proceed against Rosenbaum alone, on a relatively few count indictment or on a multi-defendant, multi-count indictment.

Mr. Accetta stated he might hold off on indicting Rosenbaum through the end of July, 1972, because of a courtesy to me and my pending military obligation, but that the Veterans Administration and Federal Housing Authority will probably act sooner against Springfield Equities Ltd.

6. That approximately one month later, Mr. Rosenbaum retained ~~and~~ present counsel, MICHAEL WASHOR, ESQ., and my services were then terminated.

RAYMOND B. GRUNEWALD

Sworn to before me this
day of February, 1976.

Notary Public

A50

M E M O R A N D U M

Re: Springfield Equities

Date: June 16, 1972

From: Norman Turk

At about 10:30 A.M. Steve Rosenbaum of Springfield Equities called to inquire as to whether or not a broker should be given a copy of a closing statement on an old file, because he was evidently asked this by the Smith Brothers, who appeared before a grand jury. I advised Rosenbaum to show me the file and we would discuss it further.

When I returned to the office about 1:00 P.M. Mr. Rosenbaum was waiting and advised me that following the initial call to me, three Special Agents of the Federal Bureau of Investigation presented themselves at Springfield Equities with a search warrant for two files concerning VA applications. The premises were 152 Sumpter Street, Brooklyn and 1677 Prospect Place, Brooklyn. The F.B.I. agents also requested that Mr. Rosenbaum contact Assistant United States Attorney, Assetta at 596-412[illegible] at about 11:00 A.M. on Monday, June 19, 1972.

While Rosenbaum was at our office, I communicated with Assetta and saw him on June 16 at about 4:00 P.M. During my conversation with Assetta, he told me that on both of these homes the prospective purchaser is one, Thomas Jones, and that he contends that Steve Rosenbaum took credit information to be used for VA mortgage

insurance application and that Steve Rosenbaum told Jones to inflate his income and conceal an existing bank ~~roll~~ loan. He further stated to me that Mr. Jones had body microphones and the conversations were recorded.

As a point of information the VA either rejected the proposed locations or came back with too low an appraisal figure so that no loan was consummated on either property.

Assetta also claims that the broker was told to pay the appraiser and that Rosenbaum said "He needed $50.00 up front to take care of someone at the VA." Assetta suggested I speak with client about possible relationships at VA with possible bribing and also suggested I inquire about a consummated transaction with Charles and Nancy Douglas of 90 Aberdeen.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

75 CR 856

NOTICE OF MOTION

- against -

STEPHEN ROSENBAUM,

Defendant

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of MICHAEL WASHOR, the attorney for the above named defendant, duly executed the day of May, 1976, and upon all the proceedings heretofore had herein, a motion will be made in the United States District Court, Eastern District of New York, before the Hon. John F. Dooling, Jr., a Justice thereof, at such time and place as the Court may determine and designate, at the United States Courthouse, 225 Cadman Plaza, in the Borough of Brooklyn, City and State of New York, for an order granting a judgment of acquittal herein, or alternatively setting aside the verdict of the jury and granting the defendant a new trial, and such further acts as to the Court may seem just and proper.

Dated: Brooklyn, New York
May , 1976

Yours, etc.

MICHAEL WASHOR
Attorney for Defendant
Office & P. O. Address
16 Court Street
Brooklyn, N.Y.
TR 5-1292

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

STEPHEN ROSENBAUM,

Defendant

AFFIDAVIT

75 CR - 856

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

MICHAEL WASHOR, being duly sworn, deposes and says that:

1. I am the attorney for the above named defendant. The defendant is now moving for either a reargument of the motion made during the trial herein, under Rule 29 of the Rules of Criminal Procedure for a judgment of acquittal or for a new trial not withstanding the verdict of the jury as hereinafter explained, pursuant to Rule 33 of the Rules of Criminal Procedure. It is believed that the Court waived the seven (7) day period described in Rule 33.

2. The indictment herein charged the defendant with two conspiracies under 18 U.S.C. 371, the first count charging such a conspiracy and designating that the purpose of the conspiracy was to violate 18 U.S.C. 201(b)(f). The fourth count likewise charged a conspiracy under 18 U.S.C. 371 but alleged that the purpose of the conspiracy was to violate 18 U.S.C. 201(f).

3. Count two of the indictment, the surviving substantive count, charged the defendant with a violation of 18 U.S.C. 201(f) which provides that it is a crime to give a gratuity to an

employee or agent of the United States, either for having performed an official act or to be performed. Count three of the indictment under which the defendant was acquitted, charged the defendant with violating 18 U.S.C. 201(b) which is a bribery charge. The bribery charge carried a penalty of 15 years in prison or a fine or monetary penalty described in said statute or both. The substantive count under which the defendant was found guilty, namely the giving of an unlawful gratuity, carries a penalty of two (2) years imprisonment or a fine of $10,000 or both. Thus the defendant now stands guilty of the two conspiracy counts and one substantive count.

4. While the jury was deliberating the defendant asked the Court to charge as a lesser included crime, 18 U.S.C. 209 which provides that "whoever, whether an individual... pay, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under such circumstances which would make its receipt a violation of this subsection..." and then provides for a fine of $5,000.00 or a one (1) year jail term. That section is the second paragraph under subdivision (a). Subdivision (a) prohibits a salaried employee of the federal government from receiving any consideration aside from his salary.

5. It is believed that the colloquoy or argument as to this was not recorded by the Court reporter. Counsel was given leave to make a post-conviction application as to that issue herein.

6. Counsel is also constrained to suggest that the verdicts should not stand because lesser counts should not have been submitted to the jury. The prosecution's case was the defendant had a specific intent to influence government officials to act as he desired or in other words to influence them by means of a payment. There was no disputed element as to this, as the defendant did not testify and hence by his testimony did not deny the acts. The insertion of the gratuity count, it is submitted, was at the option of the prosecutor. Similarly, the insertion of the gratuity charge as a part of the conspiracy under the fourth count of the indictment was also at the option of the prosecutor. It is submitted that 201 (f) was a lesser count and acted as a "safety valve" to serve the case if the jury was not convinced of the guilt of the defendant in regard to the conspiracy to offer a bribe and the bribery.

7. It follows therefore that if the defendant were not guilty of the gratuity count, it would seem that the conspiracy counts must also fall because the defendant was adjudged innocent of performing the aims of the conspiracy namely the bribery. In other words the intent to violate the federal statute in question was not there.

8. On the other hand if the Court is not inclined to render a judgment of acquittal then counsel suggests that the defendant be afforded a new trial for the ensuing reasons as well as the arguments set forth in the accompanying memorandum of law.

9. 18 U.S.C. 209 provides that it is a misdemeanor to give a government employee who draws a salary a consideration which is

in addition to the salary the employee draws from the federal government. Put another way, bribery is based on a specific intent to influence a government employee in his act or judgment within the scope of his duties. The giving of a gratuity is a crime because it is a payment for an act that in fact the employee must perform anyway; while it is a misdemeanor under Section 209 to supplement a government employee's salary. Absent a specific intent, and the purpose of paying a government employee for what he is supposed to do without a payment, then all that is left is the giving of the government employee an increment in addition to such employee's salary. The misdeameanor it is put therefore is a lesser included crime within the environs of a gratuity statute 18 U.S.C. 201 (f).

10. Since the offense under Section 209 is a misdemeanor, it would seem that the two conspiracy counts should also have included as a lesser included crime an agreement to violate 18 U.S.C. 209. Since the violation under Section 209 is a misdemeanor, then under 18 U.S.C. 371 the conspiracy would be a misdemeanor.

11. It is also urged that the request for the supplemantal charge was timely made. As the accompanying memorandum of law shows it is a common practice for the Courts to give supplemental charges while the jury is deliberating. See Rule 30 of the Rules of Criminal Procedure.

12. Furthermore, since the substantive count defendant was convicted under required concerted action, defendant could not be convicted of conspiracy.

13. Prior to trial the defendant moved for a dismissal of the indictment because of the delay in procuring an indictment to the defendant. The defendant renews that motion also.

WHEREFORE, it is respectfully requested that the relief set forth in the annexed Notice of Motion be granted.

Sworn to before me this

day of May, 1976

MICHAEL WASHOR

IN EVIDENCE

A58

DFK:nad
1.

NY 147-2142

The following meeting between DONALD CARROLL and STEPHEN ROSENBAUM on August 24, 1972 was recorded in the parking lot of the Diner, Merrick Road, Bellmore, New York, through a radio transmitter on the person of DONALD CARROLL.

CARROLL: Hi ya

ROSENBAUM: Hi there, how are you?

CARROLL: A little nervous (Inaudible)(IA). A couple of days ago, I had a visit

ROSENBAUM: From where?

CARROLL: From the boys, from the boys. They came in the office. Why don't we sit inside. Do you think anybody can see you?

ROSENBAUM: Who came in ?

CARROLL: The FBI came in and they started asking all kinds of questions about your outfit. Right? How well do I know you? Who LOU LERNER is? How well do I know LOU and all, you know, and so on and so forth.

ROSENBAUM: Yeah

CARROLL: Ah, I didn't think too much of that.

ROSENBAUM: Yeah.

CARROLL: But then I realized that the auditors are in

DFK:nad
2.

NY 147-2142

ROSENBAUM: Uh huh, don't worry about anything, all right?

CARROLL: You're sure?

ROSENBAUM: Eh, youshmuck, I don't...

CARROLL: How do ya, how do ya...

ROSENBAUM: ....did it happen.

CARROLL: ...no I don't mean that, but how did, how, well what about the two? How did you bury the two thousand?

ROSENBAUM: I don't know what you're talking about. I don't even know whatyou're talking about. I don't know what you're talking about. I don't know whatyou retalking about.

CARROLL: You're sure? Do I have....

ROSENBAUM: Ah, ah. I don't even know what you're talking about. I really don't know. I swear to God... (IA)...I don't know what you're talking about... (IA)...you understand me, right?

CARROLL: Beautiful, beautiful...Well beauti...I haven't even been home in two days.

ROSENBAUM: OK

CARROLL: Beautiful, I'm, I'm here in, I'm here in, I'm here in, STEVE, I'm here in Freeport with the broad for two days. I having a little, you know.

ROSENBAUM: Oh.

DFK:nad
3.

NY 147-2142

CARROLL: Well what else is new, you know.

ROSENBAUM: Ah, I don't need, ah, when you mention these things I don't even know what you're talking about. You understand? I can't even discuss it with you, at all.

CARROLL: I have nothing to worry about. That's all I'm concerned about, STEVE.

ROSENBAUM: Now, wait a minute. When you say something to me, you were only a friend of mine, I mean, I knew you for many years, I mean ah, that has nothing to do with anything as far as what you are talking about, I don't know what you are discussing. Ah, you can't put me in that categorization. I never did it and I never will.

CARROLL: I not, you know, when it came to me they....

ROSENBAUM: There is no way

CARROLL: ...sounded, they sounded like they knew more than they were supposed to know.

ROSENBAUM: There is no way. There is no way they can put me in that class, no matter what, no matter what you understand? Take care.

CARROLL: All right, ah, I, I can't, I can't, I can't give it back to you right now

ROSENBAUM: I don't want to (IA)

CARROLL: Get out of here. Have a good day.

BREAK

DFK:nad
4.

NY 147-2142

CARROLL: Know more than you're saying, you know a little too much more than you're saying and then, then I got nervous about the...

ROSENBAUM: No, no, no, I don't even (IA) said that you know these guys are the worst people in the world. And when I tell you they are the worst people in the world...

CARROLL: You're telling me, I, I know this...

ROSENBAUM: OK, fine, but, you know, they look for pressure from every point, which I never had any part of, never, no matter how far, no matter how far I have to go if they are looking to prove a case against me, let me tell you something, if I have to go to jail in defense of any action, I will go to jail. But I'm not, I never took care of anyone. I will never take care of anyone. I never took care of anybody, you understand?

CARROLL: All right...you, you have this buried, that's all I care about?

ROSENBAUM: I don't know about anyone else, that's my, that's my (static - inaudible) you understand?

CARROLL: All right, I'm glad...

ROSENBAUM: I never had any part of it

CARROLL: All right, I'm glad I spoke to you

ROSENBAUM: OK, yes, good. There's lot of things that (IA)

CARROLL: I mean, I can't, I can't talk on the phone, you know

DFK:nad
5.

NY 147-2142

ROSENBAUM: I don't even want you to call me because you know (static - inaudible)

(Static)

CARROLL: I'm heading east on, I'm heading west on Merrick Road.

D O N A L D C A R R O L L , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. GOULD:

Q Mr. Carroll, could you please keep your voice up so the last juror here can hear you?

State your name for the Jury, please.

A Donald Carroll.

Q Mr. Carroll, what is your present employment?

A Salesman with a whosesale fish company.

Q Now, I refer you back to November, 1971, by whom were you then employed?

A The Federal Housing Administration.

Q And your position?

A Director.

Q Now, before you worked for the Federal Housing Adminstration, where did you work?

A I was vice-president and mortgagor for the Lawrence-Cedarhurst Federal Savings & Loan.

Q While working for that bank, did there come a time when you made certain commitments on mortgages?

A Yes, there was.

5 Carroll - direct

Q Describe as carefully as you can, to the Jury, exactly what happened?

A It is my duties as mortgagor to try to bring in the business, so to speak, and take the better mortgages and process them and bring them before a loan committee where they are approved or declined, at which time, if they are approved, a mortgage commitment is sent out to the prospective buyer.

At one time there was some discussion with myself and the president of a bank and out of sheer vindictiveness --

MR. WASHOR: Objection.

THE COURT: You wouldn't know. You can only guess at his mental state.

Tell us what he said and what occurred.

THE WITNESS: The vindictiveness was on my part, not the president's part, to clarify that.

Is it all right to use the word?

THE COURT: Yes, because you are the expert on your own mental state.

THE WITNESS: Hardly, your Honor.

A (Continuing) In any event, through this thinking on my part, I proceeded to write on my own behalf,

without the benefit of the bank, some $2,000,000 worth of mortgage commitments.

Q When you say "write" on your own behalf, you were writing the commitments on behalf of the bank; is that correct?

A They were on bank stationery. They did not have the benefit of the full loan committee.

Q In other words, the loan committee of the bank had not approved?

A They had not approved nor did they know.

Q It was a private bank?

A It was federally chartered.

THE COURT: Was it owned by stockholders?

THE WITNESS: Yes.

Q Continue, please.

A These mortgages were written over a period of approximately two months, at which time I was selected to become the director of the Federal Housing Administration in Hempstead.

Q Mr. Carroll, one moment.

Up to this point you had issued a commitment for $2,000,000 in mortgages. That doesn't mean you told somebody you would give them money, does it?

A No. This is strictly paper, no money was

7 Carroll - direct

transferred at this point.

Q But the bank was in effect going to buy the mortgages from the people you promises them to?

A Yes, sir, a commitment issued on behalf of the bank which will be honored by the bank, and the money in the face amount of that commitment would be issued at the time the mortgage is closing.

Q Referring to Government Exhibit No. 1 in Evidence, the person you told you would take these mortgages from, who was that?

A It was a mortgage company.

Q Would you give us the name?

A United Institution.

Q So, though you were not Fanny Mae or Ginny Mae, you are talking about this transaction here?

A It had nothing to do with Ginny Mae or Fanny Mae.

Q But the mortgage company was going to sell you the mortgages at whatever the discount rate was; is that correct?

A That's right.

Q When you told United that the bank would take these mortgages had you told the people at this mortgage company that you had authorization?

A I simply asked them: Should there be any questions about the mortgages, any problems at all, he should contact me and not anyone else in the bank.

At that point I don't believe they knew.

Q Now, in the period between the time you gave the commitment and the time you were then appointed to be director of the FHA, was there any change in the discount rate?

A Yes, unfortunately, the discount rate changed and the point structure went down or up -- however you can say it -- it went from what I was writing at th time, 99 or 98, it then went to 97, a three-point discount.

Q So these mortgages were now worthless then, at the time you offered the commitment?

A That's right.

Q Would that make it more difficult for people to pick up these mortgages?

A Absolutely.

Q Now, after you were appointed to be head of the FHA, did you take any actions to try to cover the transaction that occurred while you were working in private business?

A Yes. As you can readily realize --

MR. WASHOR: Objection, your Honor.

THE COURT: Well, whatever.

You object to the word and move to strike the word?

MR. WASHOR: I do, your Honor.

THE COURT: Yes.

Do you want to rephrase the sentence, Mr. Carroll?

THE WITNESS: I will try, your Honor.

BY MR. GOULD:

Q Do you know a person named Stanley S-i-r-o-t-e?

A Yes, I do.

Q Can you tell me who Stanley Sirote is?

A He was the president of Inter-Island Mortgagee Corporation.

Q After you became the director of the FHA, did you talk to him at all about these transactions?

A Yes, I did. I approached Mr. Sirote and asked if there was a possibility of he or his company purchasing a group or all of these mortgages, so the bank wouldn't retain them in their portfolio.

Q And would the purchases of these mortgages have resulted in a loss to his company as a result of the discount rate?

A Yes.

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Q Did Mr. Sirote agree to do this?

A Yes.

Q Did he ask for anything in return?

A Yes.

Q What did he ask you?

A He asked that I promote two employees presently in the FHA office to a higher office at the time.

Q Did you do that?

A Yes.

Q Did you subsequently plead guilty to taking a bribe in connection with this transaction?

A Yes.

Q While director of the FHA, did Mr. Sirote ever send you anywhere?

A I took a trip to Florida with my family on his behalf.

Q Did you subsequently plead guilty to taking a bribe for this transaction?

A Yes.

Q Were you at all personally friendly with Mr. Sirote?

A I knew him a number of years.

Q Would you describe yourself as socially

friendly with him?

A A little more than the normal business relationship we have with these brokers and so forth, yes.

Q Do you remember a time in 1972, August, 1972, when the FBI came to see you involving these transactions?

MR. WASHOR: August, 1972.

THE COURT: Is the month and year right?

MR. WASHOR: I don't know.

THE COURT: You were just asking for a hearing?

MR. WASHOR: Yes.

MR. GOULD: I believe it is August, 1972.

THE WITNESS: Yes, I remember those occasions.

fols. (Continued on next page.)

lam/3

DIRECT EXAMINATION

BY MR. GOULD: (Cont'd.)

Q Did they ask about the transactions?

A Yes.

Q Initially did you tell them the truth?

A The first encounter with the FBI I didn't tell the truth, no, I didn't.

Q Would you briefly describe that encounter to the jury?

A With the FBI agents?

Q Yes.

A They came in the office and had a discussion with me that lasted a couple of hours, I believe. They ran through the whole gambit of how I am and what I am and got it around on the subject of mortgage commitments et cetera and I denied knowing about any illegal activity and that's the way the meeting ended -- with my denying it. Excuse me, this was August.

Q I believe it was August -- excuse me -- no, I believe it was much earlier, probably around April.

A Yes, that's why I asked that question because the first meeting I recollect having with them, I had denied everything that they questioned me on and specifically the mortgage commitments and et cetera and

that I knew nothing about illegal activity at that time.

Q You told them that?

A Yes.

Q That wasn't true?

A Definitely not true.

Q Did you subsequently go to see the United States Attorney?

A Yes, after another meeting with the FBI.

Q Did you agree to plead guilty?

A Yes, I did.

Q Did you, in fact, about September of 1972, plead guilty to the two bribe counts that I mentioned?

A Yes, I did.

Q Involving the Florida trip and Stanley Sirote?

A Yes.

Q Were you sentenced?

A I was.

Q What sentence did you receive?

MR. WASHOR: Objection as to the sentence he received.

THE COURT: [illegible], I think it would be proper on cross and may therefore be proper to the jury at this time.

THE WITNESS: Is it all right to answer the question.

MR. GOULD: Yes.

A I received ten years for each count concurrently.

Q Was that later reduced to five years?

A Yes, it was.

Q Do you know who Bernie Roth is?

A Yes, I do.

Q Tell the jury his position in 1972.

A Bernie Roth was, I believe, president of the United Mortgagee Corporation -- United Institution.

MR. WASHOR: Objection unless there is relevance to be demonstrated.

MR. GOULD: I will make an offer of proof at the side bar.

THE COURT: Very well.

(Side bar)

THE COURT: What's the man's last name?

MR. GOULD: R-o-t-h.

Mr. Carroll solicited several mortgage people to get money, some of them turned him down and particularly in view of Mr. Washor placing heavy emphasis on Mr. Rosenbaum and the money. One

made him sign a promissory note to pay the money back. Mr. Roth also subsumed some mortgages but asked no favors of Mr. Carroll, never had favors done for him that Mr. Rosenbaum had done for him, by Mr. Carroll. This is to get the background of the different people he solicited, how they responded and particularly the ambience of the intentions of the people. The person loaning money signed a note and he was there when his house was sold to get some money back.

MR. WASHOR: My objection is that the Government is trying to establish guilt by comparison as to what was done or not done by others.

THE COURT: I take it you won't be able to show that any of this or any of the other transactions were known to Mr. Rosenbaum.

MR. GOULD: No -- but -- well, no. These are crimes which he's not prosecuted for and we have the right to bring them out on direct.

THE COURT: If he pleaded to them.

MR. GOULD: Well, were any witnesses -- that part of the agreement he was not prosecuted for.

THE COURT: That part of the agreement you can bring out but not details unless it was known

to Mr. Rosenbaum otherwise his conduct would have to be measured by what Carroll disclosed to him and he disclosed to Carroll.

MR. WASHOR: I suppose if by accident I opened the door on cross that changes --

THE COURT: It's hard to keep it closed again.

MR. GOULD: There were mortgage people who turned him down and I think the jury would get a distorted picture of this whole operation if it sounds like everybody he went up to said, sure, go ahead, there's no problem, the jury will get the picture this is an okay thing to do. He was even turned down by Harry Bernstein -- I can't give the jury the background on that.

THE COURT: Who is that?

MR. GOULD: The nine month trial thing.

THE COURT: I don't think this is a question of the trade or anything like that. It's right or wrong in terms of Mr. Carroll's transaction with Mr. Rosenbaum in the absence of something that would come to Mr. Rosenbaum's notice. He might say he knew you were dealing in such a way that you were on the take but that's another thing.

MR. GOULD: As I stated yesterday after

trial, no matter what the law is on this, there is going to be a certain amount of jury sex appeal and a certain amount of not jury sex appeal and if they get the feeling that everybody in the business did it -- as a matter of fact when Bernie Roth did it he didn't ask for favors as Mr. Rosenbaum did.

THE COURT: I don't think I can do that because I think what you are trying to do -- not what you are trying to do but the effect of the evidence would be to present to the jury a sort of empirically derived standard of honesty. I don't think you can do that. I think that the standard of honesty has to be derived from law and not from people's compliance or non compliance with it and that the facts and all the facts related to the transaction are what probably belong to the jury.

Now, you see, if it was the other way around, if Mr. Rosenbaum's defense was brought out through Carroll that this was honestly a loan and that's all, then if you had such evidence, you could show two other transactions and they were with people in the FHA or VA and there were no other liens.

In other words, he doesn't go around lending money to people but only personal loans with people in a position to help in business. This isn't that.

MR. GOULD: May I bring out Mr. Carroll solicited only people in the business; did not solicit any personal friends?

THE COURT: Yes, you can ask him that.

MR. GOULD: One last thing I will gladly trade, not being able to use this evidence for a charge to the effect of your answer to me is that the law is what the law says and not what the standard is. I would, in fact, request something like that.

THE COURT: We'll see. Judges are not estopped from committing their follies. They are permitted to recover towards wisdom.

(End of side bar.)

(Continued on next page.)

Q Now Mr. Carroll, did you also solicit help in your problems from other people in mortgage companies?

A Yes.

Q And did some other people help you?

A Yes, they did.

Q And was it part of your agreement with the Government that you would not be prosecuted for those transactions in return for pleading guilty and cooperating with the Government?

A Could you elaborate?

Q Was it part of your agreement the Government, in turn for your plea of guilty, and your cooperation, that you would not be prosecuted for the other criminal acts?

A Yes.

Q Now Mr. Carroll, when did you stop as director of the FHA?

A November 3, 1971.

Q Now, you were director of what branch of the FHA?

A Hempstead Insuring Office in Hempstead, Long Island.

Q What area did that cover?

A The eleven counties, the five boroughs, parts of Westchester.

Q How long have you been working the mortgage business field?

A Approximately 20 years.

Q Now, how long did you remain director of the FHA?

A Nine months.

Q Now, as director of the FHA, was it part of your duties and responsibilities to be familiar with the rules and regulations of the FHA?

A Yes, I would think so.

Q Were you familiar with those rules and regulations?

A Yes, I was.

Q Were you familiar with the way the FHA operated?

A Yes, I was.

Q Now Mr. Carroll, I'm going to show you what has been marked into evidence as Government's Exhibit No. 2. Do you recognize that as an FHA file?

(Document shown to witness.)

A Yes, I do.

Q Now, could you tell the jury when a conditional commitment is issued --

THE COURT: By the FHA.

Q -- by the FHA?

A A prospective buyer or broker will submit a request for a conditional commitment or an appraisal of that

property and when the house is appraised, the FHA will put a figure on it and issue a conditional commitment indicating the amount of mortgage that would be placed on the house, subject to the purchaser's credit of course.

Q Do they give that person a time limit as to submitting the papers and having everything submitted?

A Six months I believe is the condition.

Q This refers only to the appraisal; is that correct?

A Correct.

Q Does it refer to having handed in mortgage papers or processing other papers?

A No, strictly speaking "conditional" right now.

Q Could they have the appraisal before any of these other things occurred?

A Absolutely.

Q I'm going to show you what is Government's Exhibit 2 --

MR. GOULD: May I have a minute, your Honor?

THE COURT: Yes.

(Pause.)

Q (continuing) -- 2H. Will you tell us what that is.

A That is a request for thefirm commitment or approval of the purchaser buying a home.

Q Is this the first time the FHA gets all the mortgage papers and everything else?

A It is the first time that the FHA will receive the credit statements and applications asking for a firm commitment, yes.

Q Now, how can you tell at what time the FHA received this document?

A All papers coming into the application department are stamped, supposedly, the same day it is received with a date stamp on it.

Q The stamp onthe top middle would be the date it was received?

A That's right.

Q And the handwritten dates at the bottom, what would that refer to, next to the name "Alfred Thomas" or "Douglas Holmberg"?

A This is the time they closed the mortgage.

Q This would be before the FHA received it?

A No -- let me just check.

Yes, of course, I am sorry.

Q The important thing --

A This is after the loan had closed and we received it for mortgage insurance purposes.

Q When this is stamped, you get all these papers?

A Yes.

Q I show you Government's Exhibit 2D, the firm commitment form.

How can you tell at what time the firm commitment was issued by the FHA?

A There is a place provided on the commitment, specifically the date of the commitment, and it is dated and signed by the issuing officer. There is a stamp on that sheet.

Again, that stamp refers to after the papers have come back -- after the loan is closed and submitted for mortgage insurance purposes

Q But the firm commitment is not the stamp on the firm commitment page, but the date written on the firm commitment?

A Yes.

Q On 2H, can you tell us from this document what time the credit papers and everything else was received?

A The stamp recalls July 9th, 1970.

Q And from the firm commitment, can you tell what time the FHA made a firm commitment on this deal?

A July 9th, 1970.

Q The same day?

A The same day.

Q And can you tell us from Government's Exhibit 2D,

the credit analysis page, what date the credit analysis was done?

A 7/9/1970.

Q Mr. Carroll, while you were working in the FHA, were you familiar with the time it normally took a legal typed and processed routine case to go from that 2H, the mortgagee's -- withdrawn.

-- the mortgagor's application, to the firm commitment -- up until the time of the firm commitment?

A When I was with the office it took anywhere from three weeks.

THE COURT: Three weeks to when, sir?

THE WITNESS: At least three weeks to mostly six weeks.

Q Ever take one day?

A Not that I can recall.

Q Now, Mr. Carroll, could you briefly describe your duties as the head of the FHA?

A Well --

Q -- in Hempstead?

A There were approximately 150 odd people working there in various departments. My duty was to first familiarize myself with the entire operation and then to supervise all phases of the operation, try to get things rolling because

we were in quite a bind timewise and lagwise, and so forth.

It was one of complete -- I had jurisdiction over the entire office and I was just trying to keep things rolling.

Q Now, were there any regulations as to employees receiving gratuities or Christmas gifts?

A It was the practice of the Federal Housing Administration to issue a type of letter, approximately around the Christmas time, the end of December, that no gifts were to be received by any employees of FHA This circular, as we called these, was signed by the Director and sent out to all banks and lenders and anyone having business with the FHA.

Q Now, coming back for a moment to the transaction we were talking about before:

Did you ask any friends to borrow money to cover the problem that you were in, personal acquaintances?

A No, I did not.

Q Did you ever go to a bank to try and borrow the money?

A I did not.

Q Do you know a person named Stephen Rosenbaum?

A Yes.

Q Do you see him here today?

A Yes, I do.

Q Would you point him out, please?

(Mr. Rosenbaum stands.)

A That makes it easier.

Q The gentleman next to Mr. Washor?

A Thank you, Steve.

Q Referring to the period before 1972, did you know Stephen Rosenbaum?

A Yes, I did.

Q And how did you know him?

A Through the business that we were both in.

Q The mortgage business?

A The mortgage business, that's right.

Q Was he a partner of yours?

A A partner of mine?

Q Yes.

A No, sir.

Q Did you ever go to his house?

A No, sir.

Q Did you ever meet his wife?

A Not to my knowledge.

Q Do you know how many children he has?

A No, I am sorry I do not.

Q Did you ever call him upand talk about things not related to business in the evening?

A No no.

Q Did you ever meet him outside of work for a social dinner?

A I would say lunches -- I referred to the plural. I do not know if I had more than one. I imagine I did. It was my business to meet with people and have lunches.

Q Did you have any what we call social contacts with Mr. Rosenbaum?

A No.

Q Did you ever borrow any money from him before 1972?

A No.

Q Did you ever ask to borrow any money?

A No, I did not.

Q Did you ever borrow any money or get any money from Springfield Equity before 1972?

A No.

Q Did you ever ask for money or borrow money?

A No.

Q Now, referring you to around Febtuary of 1972, did you speak to Mr. Rosenbaum about trying to cover this problem?

A Yes, I did.

Q That you had fallen into?

A Yes.

Q Can you tell us the circumstances of the first time you had spoken to him?

A Steve was in my office and I had indicated to him a problem that I had with certain mortgages and I asked him if his company would be able to take those mortgages and put them in their own portfolio.

Q Do you know what company he worked for?

A Springfield Equity.

Q What did he say to you?

A He implied that he was not thefinal word, that he would have to go back and discuss it with his directors or other officers, and he'd talk to me later about it.

Q When you say "implied" did he say that?

A Yes, he said that he would talk to other people in his company.

Q At that time did you threaten him with any reprisals if he did not do what you wanted him to do?

MR. WASHOR: Objection, he is leading the witness.

THE COURT: Ask him for the whole conversation.

Q Was there anything else said other than the jist of what you described?

A No, we left it off that Steve would contact me at a later date.

(Continued on next page)

Q And did he contact you at a later date?

A Yes.

Q What did he tell you about the portfolio?

A He indicated --

MR. WASHOR: Objection to what he indicated.

THE COURT: What he said.

A (Continuing) Steve said that he would not -- his company would not be able to purchase or pick up the mortgages. However, he would be able to give the $2,000 to possibly help offset any of the point spread.

Q By this point spread --

A The loss of the mortgages.

Q You are referring to the unfavorable discount rate?

A That's right.

Q Did he say that he had gotten approval for this?

A I can't verbatim say that. I think he said that, yes.

Q Now, did you subsequently speak to him again about this money?

A Yes. I contacted Mr. Rosenbaum myself. I was in the city at the time. I called him at his office and I asked him about the $2,000 and when could I get it, that I needed it as soon as possible.

Q What did he say?

A He said, "All right," and we set up an appointment and I believe the appointment was for the following morning.

Q Do you remember when this was, the date?

A Oh, the latter part -- the latter part of February, I believe.

Q Yes.

A The end of February.

Q What day was it?

A It was on a Saturday morning, that I am sure of.

Q The appointment was set for Saturday morning?

A Saturday morning.

Q Where was the appointment set for?

A I met Mr. Rosenbaum in a diner.

Q Who suggested where to meet?

A Mr. Rosenbaum.

Q Anddo you remember where that diner was?

A It was either in Bellemore or Merrick. I know it was on Merrick Road. As I say, it is either Bellemore or Merrick. It is a few years ago.

Q Had you ever been to that diner before?

A No.

Q How did you know how to get there?

A Mr. Rosenbaum had given me directions.

Q Did you meet Mr. Rosenbaum there?

A Yes, I did.

Q About what time?

A The meeting I believe was scheduled for eight o'clock in the morning and I met Mr. Rosenbaum at eight o'clock in the morning.

Q Could you describe for the jury, please, what happened at that meeting?

A Oh, Mr. Rosenbaum and I met in the diner and we sat -- sat at a booth and we had a cup of coffee and talked preliminarily, at which time Mr.Rosenbaum said that he had the money for me and if we go into the men's room he would give me the money, which of course we proceeded to do.

Q You went into the men's room?

A Yes.

Q Was anyone else in the men's room?

A No, the room was empty.

Q What happened there?

A Well, Steve reached into his pocket and pulled out an envelope, gave me the envelope. I put the envelope in my pocket and walked back to the table that we previously sat in.

Q At the time the envelope exchanged hands, did Mr. Rosenbaum say anything else -- ask her anything at tha

time?

A Are we referring to in the men's room?

Q Yes.

A There was no discussion.

Q When you came back to the diner, did you have a further discussion?

A Yes.

THE COURT: The table in the diner?

MR. GOULD: Yes.

Q When you came back -- did you come back to the table in the diner?

A Yes, we both returned to the same table in the diner.

Q Did you have a discussion there?

A Yes, we had some talk.

Q Mr. Rosenbaum ask you anything?

A Mr. Rosenbaum had asked me if there was any -- what was happening with the Federal Bureau of Investigation with respect to checking files and pulling files and specifically who were they.

Q Pulling files in your office?

A Pulling files in the FHA office, that is right.

Q Did he ask you about his files?

A Of course.

Q What did you tell him?

A I told him, "Yes," but not to worry, they're pulling everybody's files.

Q What did Mr. Rosenbaum say?

A He was still a little concerned as to what it was they were looking for, what they wanted, what they were after and why they are taking them, the usual type of questions.

Q Did you tell him that the different mortgage companies --

MR. WASHOR: Objection, your Honor. He is leading the witness.

THE COURT: Yes.

See if you can get the events. If you are reasonably sure that he has exhausted his recollection, then you can use means to refresh it.

Q Mr. Carroll, do you remember characterizing to Mr. Rosenbaum -- withdrawn.

Do you remember anything else of that conversation?

A No, the conversation was as I already mentioned. I indicated the various mortgage companies -- I do not believe I left many out -- the FBI and the Justice Department were checking into -- and I believe thatwas the end of it.

Q Mr. Carroll, had you discussed this FBI

investigation with any other mortgage company people?

A No, I did not.

Q Had you discussed it with Mr. Rosenbaum?

A Yes, I did.

Q Would you tell us why you discussed it with Mr. Rosenbaum?

MR. WASHER: Objection.

THE COURT: Overruled.

Q Mr. Carroll?

A I am sorry?

Q You may answer.

A I would discuss anything with Mr. Rosenbaum at that point.

Q Why?

A Because I had just received some money. I said I needed it and I would have said anything -- discussed anything.

Q What you told him, was that the truth, the information that you told him about the files being pulled?

A Certainly they were being pulled.

Q Now, did you subsequently count the money in the envelope?

A Yes, when I went -- when I got into my own car on my way home I did open the envelope and I did count the

7 1 money.

2 Q How much was it?

3 A There was $2,000.

4 Q Did you ever sign a note of indebtedness of any

5 kind?

6 A No, I did not.

7 Q Did Mr. Rosenbaum ever tell you what interest you

8 had to pay on that?

9 A No, there was no discussion of that.

10 Q Did he ever tell you when you had to pay it back?

11 A No.

12 Q Did he ever tell you that you had to pay it back?

13 A No, he did not.

14 Q Did you ask him about any of that?

15 A I don't think so, no.

16 Q Did you ever pay it back?

17 A No, I did not.

18 Q Now, subsequent to this meeting at the diner,

19 you agreed to cooperate with the Government; is that correct?

20 A That's right.

21 Q And did you agree to have a body recorder put on

22 your person?

23 A Yes, I did.

24 Q And you signed a waiver saying that was okay for

25

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the FBI to do that?

A Yes, I did.

Q Did you subsequently try to contact Mr. Rosenbaum?

A Yes.

MR. WASHOR: I will object as to what he tried to do.

THE COURT: No, he may. Not in those similar terms, but you can ask him what, if anything, he did in connection with getting in touch with him.

MR. GOULD: Thank you, your Honor.

Q Did you get in touch with Mr. Rosenbaum subsequently on the telephone?

A Yes.

Q Was that conversation recorded?

A Yes.

Q You heard the tape?

A Yes.

Q Is the tape an accurate reflection of what went on in that conversation?

A Yes, it is.

MR. GOULD: Your Honor, at this time I am going to pass out to the jury --

THE COURT: First, may I talk to you and defense counsel?

(The following transpired at side bar.)

THE COURT: I just wanted to know is this one of the tapes that everybody agrees is legible?

MR. WASHOR: Yes.

MR. GOULD: I would like to say that there were twelve phone calls and he could not get a hold of Mr. Rosenbaum.

Rather than try to play all twelve of them --

MR. WASHOR: I do not consent to that. I want the whole tape. Let the jury know that twelve times they had to call to contact him.

MR. GOULD: That is fine.

THE COURT: I think he is entitled to that, if he wants it.

MR. GOULD: I agree. I'd be very happy.

THE COURT: Mr. Gould says are you sure it is my ox that you are goring?

MR. GOULD: Only the one that is finally connected is transcribed.

THE COURT: They are all audible so we can go along without the transcript?

MR. WASHOR: Of course.

THE COURT: Is this a convenient place for a recess? You can have a little test run?

THE AGENT: We had a test run yesterday.

THE COURT: How long will it take?

MR. GOULD: Five or six minutes.

THE AGENT: It might be about fifteen.

MR. WASHOR: My suggestion is that the jury be notified that what they are going to listen to first has not been transcribed, so they don't look at the paper and listen and say, "Where is this?"

THE COURT: We will give them a signal when they are up to the transcript part.

MR. GOULD: Following that there will be another tape which is four or five pages in the transcript. I do not know how long it will be. This will not be too long, either.

MR. WASHOR: They are very short.

MR. GOULD: Do we need time between the first and the second?

THE AGENT: Just to put the new cassette on.

MR. WASHOR: We are going to recess now for a few minutes?

THE COURT: My only question, if they are going to be long, since it is now 11:30, some of us smoke --

MR. GOULD: Maybe we should take five minutes.

MR. WASHOR: Yes.

(The following transpired in open court.)

THE COURT: We will have a short recess, members of the jury. I am sure that yellow pads are very sanitary, much more than the gray ones we had the last time. We will have a short recess.

Do not discuss the case with one another or with anyone not on the jury until it is given to you to decide.

(Recess taken.)

(continued next page)

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MR. GOULD: Your Honor, may I complete the handing out of the transcript?

THE COURT: Yes.

Members of the Jury, this is a transcript of a part of the tape which you are going to hear.

The very first of what you will hear has not been transcribed and when we get to the part where the transcription catches on, I expect Mr. Kellener will signal by raising his hand or something.

Now, you can look toward the transcript to help you in hearing it.

I should say this to you, that the evidence here is not this transcript, but what you hear on the tape, because this is simply the stenographer's statement of what he or she heard on the tape.

The important thing is what you hear and this is simply to guide you, so that you can keep pace with the interchange of voices, et cetera.

All right.

MR. GOULD: I'd like to --

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BY MR. GOULD:

Q Mr. Carroll, now, this meeting in the diner, again, took place at the end of February, is that correct?

A That's correct.

Q And were you cooperating with the Government at that time?

A No, I was not.

Q Now, when did you agree to cooperate with the Government?

A I believe it was sometime in September. August or September.

Q All right.

This conversation took place August 24th; is that correct? 1972? Let me show you.

A I don't have a copy.

Q Excuse me, Mr. Carroll.

Does that refresh your recollection?

A Yes.

Q Yes, what?

A Yes, this is the right date, August 24, '72.

Q You were cooperating with the Government at that time?

A I was.

Q Mr. Carroll, where was this -- where did you make this phone call from, if you remember?

A I really don't remember. It was either one of two places; in my office at the FHA, or the office in Westbury. One of those places.

(Tape being played.)

MR. GOULD: Are you having a problem with the earphones?

JUROR NO. 7: Too low.

MR. GOULD: It's too low?

(Tape being played.)

MR. WASHOR: Your Honor, apparently members of the Jury cannot hear it.

MR. GOULD: Stop.

THE COURT: Just a moment. I believe what Mr. Kelleher is trying to do is not to deafen the people with the electronic sounds, so he has been turning the machine down until the connection is made.

Is that right, Mr. Kelleher?

MR. KELLEHER: Yes, sir.

THE COURT: You say he is notgetting the volume on enough; is that the way you feel, members of the Jury?

JUROR NO. 3: A little low.

THE COURT: So the other alternative is to keep it on high volume -- would be, Mr. Kelleher, to keep it on high volume and then we could hold it off our ears until we can hear the connection being made.

Would that be better do you think?

JROR NO. 4: Yes.

THE COURT: Very well.

(Tape being played.)

MR. GOULD: This is the transcript now, your Honor.

(Tape being played.)

BY MR. GOULD:

Q Mr. Carroll, that Bellmore Diner, where you met Mr. Rosenbaum and gave him the money in February?

A Yes, it was.

Q And had you ever heard of that diner before your meeting with Mr. Rosenbaum?

A No, not before the first meeting with him, no.

Q Now, I take it that the first phone call turned out to be the wrong Steve Rosenbaum; is that correct?

A Apparently. I had forgotten.

MR. WASHOR: I will stipulate to that.

MR. GOULD: Your Honor, could we just have a very quick side bar? I don't think it is important.

(The following occurred at side bar.)

MR. GOULD: This is really nothing but in the interests of accuracy, I've been informed there -- this was not recorded with a body recorder. It's some kind of microphone device over the phone, for whatever it is worth.

I think I asked him if he was wearing a body recorder when he did this.

MR. WASHOR: I'm not concerned with that. There is no legal grounds to object to the introduction of the tapes, so whether it would be considered a Kel or a Lody tape or something --

MR. GOULD: I wanted --

MR. WASHOR: A little legal efficacy, unless you can agree to dismiss the indictment because of that?

THE COURT: No such luck, I'm afraid, Mr. Washor.

MR. WASHOR: They say you got to try.

(The following occurred in open Court.)

BY MR. GOULD:

Q Now, Mr. Carroll, did you subsequently go out to the parking lot of that diner?

THE COURT: Following the conversation --

MR. GOULD: Following the conversation --

THE COURT: -- the Jury has just listened to?

THE WITNESS: Yes, I did.

Q Do you have a copy of the transcript?

A Yes.

Q And were you wearing a body recorder at the time?

A Yes, I was.

Q Andhad you given the FBI permission to put that recorder on you?

A Yes, I did.

Q And did you subsequently record the conversation between yourself and Mr. Rosenbaum?

A Yes, I did.

Q Have you heard a tape of that conversation?

A Yes, I have.

Q And did that tape accurately reflect what occurred?

A Yes.

MR. GOULD: Your Honor, at this point, to save time, the Government is going to move to have the past tape and this tape put in evidence.

Perhaps we could bring them both up later to be marked.

THE COURT: Very well.

MR. WASHOR: Can't think of a ground to object upon, Judge.

Is that 22 -- 23 and 24?

MR. KAY: 23 and 24.

(Tape being played.)

THE DEFENDANT: Can't give it back to you.

(Tape being played.)

BY MR. GOULD:

Q Mr. Carroll, you describe -- did all this take place in the parking lot?

A Yes, it did.

Q And will you describe briefly the positions of the two of you while this conversation was going on and what was occurring?

A Yes. I think Steve was on one side of a -- of the automobile and I was on the other side.

Q Whose automobile?

A I believe it was Steve's. It was Steve's,

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Q Did you shake his hand when you came up to meet him?

A I think I did. Yes in the beginning. Yes.

Q And then what happened?

A Well, apparently Steve didn't want to -- didn't want to stay took close to me for I don't know what reason but he went on one side of the car, and as I said, I was talking on the other side and the conversation took place just approximately over the hood, as I recall.

Q Did you try to get closer to him?

A Yes, I did.

Q What happened?

A He just kept being "X" feet apart.

Q And --

A I did not make a point of it, gettomg c;pse/

Q How would you characterize his demeanor?

A His what, sir?

Q Demeanor, the way he was acting?

MR. WASHOR: Objection, your Honor.

THE COURT: Just tell the Jury what you observed of his actions and they can form their own judgment.

Q Now, this statement where Mr. Rosenbaum

said, "I don't know what you're talking about, I don't know what you're talking about, I don't know what you're talking about, I don't know what you're talking about," were you on the two separate sides of the car at that time?

A Yes, I was, or we were.

Q Now, Page 2, I believe, you changed --

THE COURT: The pages are numbered in the upper left-hand corner under the initials.

Q There was some inaudible parts of the tape, Mr. Carroll. Did you ever shut that tape off?

A No, no. Not at all.

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(Continued on next page.)

BY MR. GOULD:

Q Now the discussion about, these guys are the worst people in the world, and your answering him.

What people were you and Mr. Rosenbaum talking about, if you remember?

A Well, it was a general discussion we had as far as I started talking about the HUD auditors.

I imagine it was --

MR. WASHOR: Objection to what he imagines.

THE COURT: What did you mean by it when you said: The worst guys in the world, or accepted that.

THE WITNESS: The Justice Department were the people I had in mind.

BY MR. GOULD:

Q Tell how the meeting broke off -- ended?

A It ended just as the tape indicates. He said boodbye --

MR. WASHOR: Objection to his analysis of the gist of the tape.

Q Tell the action taken -- who got in what car, who left first, if you remember?

A Stephen got in his car first.

Q Did you see him drive out of the parking lot?

A Yes, I did. I got in my car and I drove off.

Q Since that time, have you ever spoken to Mr. Rosenbaum again about any matter at all?

A No, sir. Steve was in my office at the time --

MR. WASHOR: Can't we have a responsive answer?

THE COURT: Yes.

Q Since this August taping we just heard, had you spoken to Mr. Rosenbaum at any time after that?

A Yes, I have, or I had.

Q Was that at the office of the FHA?

A Yes, sir, it was.

Q Now, while you were the director of the FHA, did you ever ask anybody, any of your assignment clerks, to make certain assignments of appraisers?

A No, I did not.

Q Did you ever tell -- withdrawn.

Did you ever commit any illegal activities other than the ones you mentioned connected with the mortgage commitments you had made?

A No, none other than I told today.

MR. GOULD: The Government has no further

questions, your Honor.

CROSS-EXAMINATION

BY MR. WASHOR:

Q Sir, you have a copy of the transcript in front of you; am I correct?

A That's right.

Q You testified --

MR. GOULD: Which transcript?

THE COURT: Both.

THE WITNESS: Both transcripts.

Q One transcript is a telephone conversation where you made an appointment; correct?

A Correct.

Q I am talking about the transcript of the conversation.

Sir, you testified under oath that there were no arrangements made as to when you were to pay this money back; am I correct?

A There are conversations on both transcripts --

Q Forget the transcripts.

A You said there was a conversation only on the one you referred to.

Q Forget the transcripts, so I don't mislead

you.

Isn't it a fact, Mr. Carroll, that under oath this morning, you testified at no time were there any discussions as to how, where, when or what manner or formyou would pay money back?

A That's correct.

Q No doubt about that?

A Not in my mind.

Q Mr. Carroll, would you turn to Page 3?

Is it not a fact, Mr. Carroll --

THE COURT: The parking lot tape.

MR. WASHOR: Yes.

Q Is it not a fact, Mr. Carroll, that you said to Mr. Rosenbaum:

"All right. I can't. I can't give it back to you right now."

Did you make that statement, sir?

A Yes, I did.

Q Were you referring to the money that he had loaned you?

A Yes, I was.

Q Now, we can start off with one assumption.

He did loan you the money, did he not?

A He gave me the money.

Q I asked you whether he loaned you the money, yes or no?

MR. GOULD: Objection, if it can't be answeredyes or no.

THE COURT: Did you understand -- that's all he can say.

MR. WASHOR: I will withdraw the question, your Honor.

BY MR. WASHOR:

Q Did you get the money as a bribe -- can you answer that question?

MR. GOULD: Objection unless there is a legal instruction to the witness as to what the word "bribe" constitutes.

THE COURT: In common usage.

Q Did you get the money as a bribe?

A I don't believe so, no.

Q Did you get the money as a gratuity, as a gift?

A I got the money because I asked him for it.

Any connotations you put on it, be my guest, but I don't know what word to put on it.

It wasn't a bribe because I asked for the money.

Q Was it a gift?

A I would say it's more a gift than it would be a loan or bribe, yes.

Q Explain to these people in the jury box why you said: I can't give it back to you now, if you got the gift, Mr. Carroll?

A I was making conversation because I was taped, Mr. Attorney.

Q You were taped?

A Yes.

Q You were making the conversation?

A Yes.

Q You did not indicate to Mr. Rosenbaum that you were wearing a body recorder, did you?

A No.

Q You didn't do it by signal in any manner or form?

A No.

Q You didn't give him any piece of paper with a note on it; am I correct?

A Correct.

Q You didn't permit him to touch your body or feel the body tape?

A That's correct.

Q That's the reason you separated yourself from Mr. Rosenbaum; is that correct, sir?

A I don't recall that being the truth at all.

Q Now, did Mr. Rosenbaum indicate to you not to worry about the $2,000 loan of his to you?

A I got that impression, yes.

Q Did he indicate to you, sir, that no matter what, he wouldn't be a rat and give you up?

A How do you want me to answer that, Mr. Attorney?

Q Truthful, sir?

A Would you repeat the question?

Q Did Mr. Rosenbaum indicate to you on August 24, 1972, in the parking lot, that you didn't have to worry about any problem as far as he was concerned that he wouldn't be a rat and give you up?

A He didn't say that at all.

Q Sir, do you remember Mr. Rosenbaum saying: You can't put me into that category?

A I do.

Q Do you remember him saying: Never, no how, don't worry about it?

A I do.

Q And do you remember him saying: What money, I don't know what you're talking about?

A He did.

Q Did he say to you: You can't put me into that categorization, I never did it and I never will?

A He did.

Q What did that mean to you when he said: I never did it and I never will?

A I would imagine he's talking about some of the problems that existed at the moment with FHA and he was discussing them.

Q Can you, on the prior pages, going back to the middle of Page 3, read it to yourself, read Page 2 and Page 1 and point out where there was discussion about prior problems at the FHA?

A Excuse me, counselor. You are asking me what did he mean. No where does it say that.

I am telling you what I thought.

Q That's your opinion.

When he said: You can't put me in that categorization, I never didit and never will; and he said: There is no way, there is no way they can put me in that class, no matter what, no matter what; do you understand; take care.

When he said those things to you, didn't he tell you you had nothing to worry about, he wouldn't

tell any agency about any money concerning you?

A The only connotation I put in this phrase, in the transcript, is that he didn't want to be put in the category of other lenders that were presently being investigated, et cetera, et cetera.

Q Didn't he indicate, as far as you understand, that no matter what pressure was put on him, he wouldn't give you up and relate the fact that he loaned you money?

A He said to forget about it on numerous occasions, yes.

Q Didn't he say to you: Don't worry about anything; and you say: Are you sure? And he said: You schmuck; and then he continued on?

A Those were his words.

Q What did you understand that to mean?

A That was the $2000 -- that particular phrase.

Q Didn't he tell you then in no uncertain terms that he wouldn't give you up and you didn't have to worry?

MR. GOULD: I believe it has been asked and answered several times, your Honor.

THE COURT: He may inquire.

THE WITNESS: I got that impression.

Q You mentioned something about a broad for two days; that was a lie, wasn't it?

A Absolutely.

Q You never indicated to him you were involved with a broad or broads or anything?

A No, sir.

Q That was just creativebecause you knew you were on tape?

A Conversation. Thank you for bringing it out.

Q Mr. Carroll, did Stephen Rosenbaum ask you to help him with any particular matter in the FHA?

A No, sir, he did not.

Q Did he ask you to: Help me; in any manner or form with any cases that were pending?

A No, sir.

Q Did he ask you to help him in any manner or form with any cases that had been closed?

A No, sir.

Q Did he ask you to do anything within the gambit of your job related to any of Springfield Equities cases?

A No, he did not.

Q Did he ask you in any manner or form to touch

files, pull files or the like?

A No, he didn't.

Q Did he ask if you would be available in the future to help him if he ever needed it?

A No, he did not.

Q Wouldn't it be fair to say, Mr. Carroll, that he loaned you the money for your own personal use?

A Again, I don't want to put a connotation on it -- on the $2,000.

MR. GOULD: I would object to Mr. Washor constantly assuming that it was a loan.

The witness testified it was more a gift than a loan.

MR. WASHOR: This is cross-examination. I have the right to develop factors.

THE COURT: The witness must be cautioned in his answers not to accept an assumption contained within questions, unless you avert to the assumption in the question and mean to adopt them as part of your answer.

BY MR. WASHOR:

Q All right, Mr. Carroll.

What did he give you $2,000 for, as far as you know?

A Because I asked him for it.

Q That's it?

A Well, no. The correct answer to your question is: I didn't ask him for $2,000. I asked him for something other than that to take over some mortgages. The $2,000 was a compromise.

Q And in return for the $2,000, what were you supposed to do?

A He didn't ask me to do anything other than our conversation in the diner.

Q What did you understand you were supposed to do for the $2,000?

A Not a thing.

Q You understand that you had to pay it back; correct?

A At the time I took the money, I had no understanding whatsoever.

Eventually I assume I would have paid it back or wanted to pay it back, circumstances just stopped me on that end.

Q Isn't it fair to say, Mr. Carroll, when you got this money from Mr. Rosenbaum, you intend to pay him back; correct?

A You are not correct, because I had no

thought one way or another at the time.

Q You got caught?

A Exactly. Thank you.

Q Before you got caught in your game --

MR. GOULD: Objection.

THE COURT: Overruled.

Q Did you have the intention to pay Rosenbaum back?

A I possibly might have paid him back.

Q Were you going to pay him back in money?

A Certainly in money.

Q You had no intention of paying him back by using your position as a public servant in a different manner or form that would violate the law, did you , sir?

MR. GOULD: Objection. Without a legal instruction.

THE COURT: No, overruled.

THE WITNESS: Would you repeat that?

MR. WASHOR: Surely.

Q You had no intention of paying Rosenbaum back other than in money?

A You're a hundred per cent wrong on that, Mr. Attorney, The money was given to me because of who I was.

It did not hold any connotation as to whether I would or wouldnot have paid him back. He wouldn't have given me the money if I was Don Carroll, a fish monger.

Q Speaking of fish monger, you are in the fish business now?

MR. GOULD: May the witness finish?

THE COURT: I believe you did, Mr. Carroll.

THE WITNESS: Yes, I finished.

BY MR. WASHOR:

Q The money was given to you because you were head of the FHA?

A I assume so.

Q And for no other reason; am I correct?

A That's right.

Q In other words, when you went about seeking money from people, you did so because of your title; am I correct?

A I didn't do it becuase of my title. I did it because of neither. The title helped me get it.

Q Did you go to a bank?

A No, sir.

(Continued on next page.)

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CROSS-EXAMINATION

BY MR. WASHOR: (continuing)

Q Did you go to a member of your family, sir?

A I don't have that kind of family --

Q You have a family --

A (continuing) -- rich family.

Q You have a family, sir?

A Yes.

Q Poor or rich, you have a family?

A Yes.

Q Do you have friends?

A Yes.

Q Did you have friends outside of the mortgage business at that time?

A Very cute -- yes.

MR. WASHOR: I object to the witness' comment "very cute" and I ask that portion be stricken --

MR. GOULD: I don't think the answer is responsive because it was a statement rather than a question.

THE COURT: I didn't hear it.

Read the answer, please.

(Record read by reporter.)

MR. WASHOR: That's the portion I move to strike.

THE COURT: It is not responsive and it is stricken on that ground.

(continued on next page)

Q Did you have friends still at that time, outside of the mortgage business?

A Yes, I did.

Q How many friends would you say you had at that time?

A Numerous.

Q How many of those friends did you go to to seek money?

A None.

Q Now, you testified on direct examination that you indicated all of the crimes this morning that you have committed; am I correct?

A Yes, I admitted to all of my crimes.

Q I am talking when you were questioned by the Prosecutor?

A Right.

Q No question about that.

A Yes.

Q You didn't leave anything out?

A No sir.

Q Did you steal records from the bank?

A Yes, sir.

Q And you left that one out?

A Right.

Q You stole from the bank so the bank would never find out about you illegal conduct as the mortgage officer; am I correct?

A That is common knowledge, the taking of --

Q Whether common knowledge or not, can you answer my question?

Did you steal records from the bank so that the bank officials would not learn of your improper conduct?

A Yes, I did.

Q Did you hide these records in your house?

A No sir.

Q Where did you hide them?

A In somebody's office.

Q Whose office?

A A friend of mine's.

Q What is his name.

A George Monica.

Q What did George Monica do for a living?

A He was in the union.

Q Did you go to George Monica when you were in trouble financially to borrow money?

A No, sir.

Q But you made him a partner of yourself when it came to stealing records from the bank, you put him in that

position?

A Yes.

Q You compromised your friend; am I correct?

A Yes, sir.

Q How old a relationship did you have with George Monica?

A About a year.

Q And you told him that you needed a place to deposit stolen records, did you not?

A That's right, sir.

Q And you imposed upon him to allow you to use his office to hide these records; am I correct?

A Right, that's true.

Q That was the reason you didn't bring them to your home, the records?

A I was in the middle of many problems, sir, with these mortgages. I didn't feel at that point like bringing my family into it. I sincerely thought that I would be able to get out of it.

Q Were you concerned about a search warrant?

A Possibly.

Q You knew that if the authorities found about your illegal conduct, they could get a search warrant for your home; am I correct?

A Absolutely.

Q So you conspired not to get caught on your crime, did you not?

A That's right, sir.

Q And this Monica, did he have anything to do with your illegal conduct at the bank prior to your stealing the records?

A Absolutely not.

Q You brought him into your conspiracy, am I correct?

A Yes, sir.

Q And what union was he associated with?

A I really don't know.

Q Let me ask you this:

You know it was a union?

A Correct.

Q You know that unions have a lot of funds, am I correct?

A Yes.

Q You know they have access to a lot of money?

A Absolutely.

Q The very man that you put into the middle of a crime, did you go ask him for help -- for money?

A No, I did not.

Q He knew your problem, did he not?

A Vaguely.

Q You discussed it with him; am I correct?

A Not entirely -- not in its entirety.

Q You did give him an explanation for hiding official bank records stolen from your office?

A Some explanation.

Q Did you tell him the truth?

A As much as I wanted to.

Q But you told him that there was a serious problem where you could be locked up; am I correct?

A He gathered that.

Q He knew that you needed money; did he not?

A Yes, he did.

MR. WASHOR: Will the Court bear with Counsel for a moment?

THE COURT: Yes.

MR. WASHOR: Excuse me for just a moment more, Judge and jury. I am just gathering my thoughts.

Q In April of 1972, you have admitted that you lied to the FBI; am I correct, sir?

A Yes, sir.

Q Were you prosecuted for that crime?

A No, sir.

Q Is it your understanding that you will not be prosecuted for that crime?

MR. GOULD: Your Honor, I object. There is a supposition there. Perhaps we can have a momentary side bar?

(At the side bar.)

MR. GOULD: Your Honor, I can document to you from the last six cases that we tried to bring, the Courts in this district have said it is not a crime. He assumes it is a crime to lie to the FBI. Although we have tried to bring several prosecutions, it has always been thrown out. It assumes it is a crime --

MR. WASHOR: I do believe it is on the books. I believe it is rendering a complete statement to a Government official in the course of an investigation.

MR. GOULD: The question is as to an FBI Agent. We just had three cases thrown out.

MR. WASHOR: It is a full statement to an Agent.

MR. GOULD: The Mitchell case in the D.C. Circuit held that that is not a crime.

I know the second circuit has not reached it, but the district courts have uniformly said that it is not.

MR. WASHOR: I do not accept "they have uniformly

7 said."

MR. GOULD: It is not settled in this circuit.

MR. WASHOR: I do not think that is the basis for a decision.

MR. GOULD: If Mr. Washor wishes to ask: "Were you put under oath by the FBI Agent", which he was, I have no objection.

MR. WASHOR: That is going to follow. We still have a crime. Whether you would be successful or not is not the question.

THE COURT: I do not know the cases.

I do not see how you can get it outside 1001.

MR. GOULD: There are clearly several circuits that have excluded it. I do not think the second circuit has been definitive --

THE COURT: (indicating).

MR. GOULD: I am familiar with the statute.

THE COURT: I think he may properly ask it.

If a defendant has a consciousness of criminality in his conduct and thinks he is committing a crime, that is quite as bad I suppose.

MR. GOULD: The witness does not know the law. The question was, "Were you convicted -- indicted for that crime?" It was not, "Do you know whether you committeed a crime?"

8 THE COURT: He was asked, had he lied, and he said he had not been prosecuted.

MR. GOULD: We assume that we could never make that charge stick.'

THE COURT: For whatever reason.

(The following transpired in open Court.)

BY MR. WASHOR (continuing):

Q Now Mr. Carroll, you have not been prosecuted for that crime of lying to the FBI; am I correct?

THE COURT: He has not been prosecuted for lying to the FBI.

Q Now, when you met with the FBI in April --

THE COURT: What was you answer to that?

THE WITNESS: No, I have not been prosecuted.

Q Mr. Carroll, when you met with the FBI in April of 1972 before you made these statements which you have admitted were lies, you were given an oath; am I correct?

A That's right, sir.

Q The oath was that you would tell the truth and you swore under God to tel the truth to the Agents; did you not?

A Yes, sir.

Q Would it be fair to say, sir, that you understood their questions?

A Yes.

Q Would it be fair to say you were able to answer the questions?

A Yes, sir.

Q Would it be fair to say that you were deliberate and willful in perpetuating the lies to the FBI?

A I lied to them on the questions asked me.

Q Sir, you testified on direct examination that you gave the illegal committments, while at the bank, totalling the sum of approximately two million dollars, correct?

A That is correct.

MR. GOULD: I object.

Q Isn't that correct?

MR. GOULD: I do not believe that was the testimony.

MR. WASHOR: I believe it was.

THE COURT: I do not know if I have the exact words used --

MR. WASHOR: I will rephrase the question.

Q Did you authorize unauthorized committments?

A Yes, sir.

Q Was it a violation of the law to give a committment without the approval of the loan committee?

A Yes.

Q It was an illegal act?

A Correct.

Q You knew as time went on that you could have been prosecuted for that illegal act; am I correct?

A Yes.

Q In other words, Mr. Carroll, this was not just merely a question of dollars and cents that you would owe to the bank if this impropriety was discovered; am I correct?

A That is correct.

Q And you knew well that you committed a crime by issuing these commitments; am I correct?

A Yes, sir.

Q And as a matter of fact, didn't you discuss with the bank officials how you could solve this problem?

A When some of it had come out after I had left the bank, I said that I would take care of the problem.

Q When you said that you would take care of the problem, you meant that you would straighten out the financial aspects of it; am I correct?

A No, the bank was only concerned in getting the mortgage out of the bank. That was their primary concern and I said that I would take care of that phase of it.

Q And you would be happy to take care of it if you could?

A Absolutely.

Q Because you knew you would not be prosecuted criminally if you coul get the problem straightened out?

A Correct.

Q When you tried to straighten out the problem, you did so for selfish reasons, am I correct, to protect yourself from being prosecuted for a crime?

A That's correct.

Q You took the necessary steps to compromise a crime committed by yourself; am I correct?

A Correct.

Q You reduced a criminal act to merely dollars and cents, am I correct, by your actions?

A I don't understand that.

Q You wanted to, by obtaining monies, by getting that mortgage out of the bank, by going through a business transaction, you wanted to prevent the bank from losing money so that you would not be prosecuted criminally?

A That's about the size of it, yes.

Q You testified on direct examination -- I do not remember the word -- deliberately or viciously --

A Vindictively.

Q You issued these commitments?

A Yes.

fols. (Continued on next page)

BY MR. WASHOR:

Q Now, isn't it a fact, that you filed false statements during the course of the issuance of these commitments?

A No, I don't recall any false statements.

Q Didn't you file false reports to the mortgage committee of the bank?

A The mortgages that were issued were not so indicated on various reports, if that is what you are referring to.

Q Mr. Carroll, did you file false reports to the mortgage committee of your bank?

A I don't know how to answer it in those words. I'm trying to explain.

Q Well -- can you answer it yes or no, firstly?

A I will say no.

Q All right.

A No, I didn't file any false reports. Not to my knowledge.

Q You remember being interviewed on August 23, 1972, by the FBI?

A Yes.

Q And at that particular time, do you remember what you discussed with the FBI?

A If I could have a copy of that excerpt? I could refresh my memory.

Q First, do you remember?

A Yes, I remember part of it. Yes.

Q Do you remember telling the FBI that you knew you were issuing the commitments without making entries on the books and records, and any reports which you would make to the mortgage committee would be false regarding the outstanding commitments?

A That was the way it was put down on paper.

Q You never said that?

A I didn't say that. I didn't say that. I said the question of false, I didn't issue false statements. I eliminated the question of mortgages I made. I just didn't show them.

Q You defrauded the bank loan committee; am I correct?

Am I correct, sir?

A I don't like the word "defrauded."

Q What word --

A Use another word.

Q What word do you like?

A I eliminated the mortgages that I had made illegally, if you will, from any report they got. They

never knew the mortgages existed.

Q You hid that from them?

A I hid that from them.

Q When you filed reports, you made sure that this -- these transactions were not contained in the reports?

A Absolutely.

Q Am I correct?

A That's exactly correct.

Q You fooled them; am I correct? For a time period anyway; correct?

A All right.

Q You defrauded them for a time period; am I correct?

A I still don't like the word "defraud."

MR. GOULD: Objection. He's described what happened.

THE COURT: He has described what happened. Is that right?

Q Now, in August, 1972, you knew you were in real serious trouble; am I correct?

A That's correct.

Q You knew that all of your improprieties and all of your illegalities had caught up with you;

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am I correct?

A That's correct.

Q You knew that there was but one way out, am I correct, Mr. Carroll?

A No, sir.

Q You didn't go to trial, did you?

A No, sir.

Q You made a deal; is that correct?

A No, sir.

Q You plead guilty; am I correct?

A Yes, sir.

Q You cooperated with the Government; am I correct?

A That's right.

Q You did so out of conscience; am I correct?

A Yes, you are.

Q Because you saw the light of the error of your wrong ways; am I correct?

A That's right.

Q And in August of 1972 --

MR. GOULD: Your Honor, he was giving an answer.

MR. WASHOR: I'm sorry.

MR. GOULD: He said: Yes, partly, and then

Mr. Washor was asking a question.

MR. WASHOR: I thought -- I thought he finished the answer.

THE COURT: His answer --

THE WITNESS: I don't remember the question.

Q All right. You came clean with all of your improprieties in August, 1972; am I correct?

A That's correct.

Q And there is no doubt about that?

A No, sir.

Q Am I correct?

A that's correct.

Q And Mr. Carroll, when you were interviewed on August 9, 1972, by the FBI --

THE COURT: This is August 9th, an earlier occasion.

MR. WASHOR: Yes, August 9, 1972.

Q You told 100 per cent the truth to the FBI agents, am I correct?

A Yes, the best of my knowledge, certainly.

Q And you reviewed all of the alleged improprieties; am I correct?

A That's correct.

Q Would it be fair to say youwanted to cleanse

yourself and get it off your chest, in a sense?

A I would rather no.

Q But you had no choice?

A I did tell what I had to tell, yes.

Q You told it all; am I correct?

A Yes, I told everything to the best of my knowledge at that time.

Q Well, have you looked at the report of your interview, August 9, 1972?

A Yes, I have.

Q All right. You are familiar with it?

A Well, as I say, if I could just see it, I could remember it.

What do you want me to recall?

Q Just want to know if that is the report that you looked at.

MR. GOULD: Shall we have this marked for identification?

THE COURT: Are you sure that's the question you meant to ask?

You asked him: Is that the report you looked at? Or is it a faithful report of your talk of August 9th?

MR. WASHOR: I will cover that, with the

Court's permission.

THE COURT: All right.

BY MR. WASHOR:

Q Mr. Carroll, the report that you are perusing now, have you see that report?

A Yes.

Q Before?

A It looks familiar.

Q Is that report -- have you read that report before you took the witness stand today?

A Not today, sir, but I have read it.

Q You have read it; is that correct?

A Yes.

Q And that report reflects all of the interviews that took place on August 9, 1972, between yourself and the FBI: am I correct?

A That's correct, sir.

Q And there is nothing omitted there, to the best of your recollection; am I correct?

A That's correct.

Q Would you explain to the Jury why there is not one single word in thatreport of getting $2,000 from Stephen Rosenbaum?

A Well, I guess it was a few things that --

there were a few items that were held out at that time.

Q Mr. Carroll, isn't it a fact that no mention was made about the $2,000 given to you by Stephen Rosenbaum because you never considered that to be an impropriety, that he loaned you the money solely because you were in financial difficulty?

MR. GOULD: Your Honor --

Q Excuse me.

MR. GOULD: It sounds like a summation.

MR. WASHOR: Can I get an answer?

Q Isn't that a fact, sir?

A You want me to answer it?

Q Yes. A simple yes or no.

A Yes or no or -- an explanation?

Q Yes or nor and they will pick it up if they want, I'm sure.

A I will answer that -- I'm sorry. Give me the question again, sir.

Q I will withdraw the question. I will withdraw the question.

A Okay.

Q You told the FBI that date when you were being truthful about speaking to Sirote and him picking up a million dollars, did you not?

A Yes, I did.

Q And you told them about the deal you made with Sirote about promoting two people to higher positions; did you not?

A Yes, I did.

Q And you told them about others that you spoke to regarding obtaining monies to help you out of your problem; am I correct?

A That is entirely correct.

Q But there is one person that you did not tell them about on August 9, 1972, and that is Stephen Rosenbaum; isn't that a fact, Mr. Carroll?

A Yes, it is. That's correct.

Q And you didn't forget August, 1972, that you got $2,000 from a friend of yours, late February, 1972, did you?

A No, I did not.

Q And isn't it a fact that the only reason you made no mention of Steve Rosenbaum and the $2,000 is because you did not consider that illegal?

A No, I didn't.

Q And you had that money because you asked him for it; am I correct?

A That was already discussed. That's correct.

Q You didn't demand the money from him?

A No, sir.

Q You asked to borrow the money; am I correct?

A I had asked him -- again, I reiterate, I had asked him to take mortgages. It was a compromise for the $2,000.

After he said he would give me, I accepted.

Q Isn't it a fact that you said nothing to the FBI when you told them one hundred per cent of the truth, August 9, 1972, about Rosenbaum, because he loaned you the money personally?

A I didn't mention it at the time, no.

Q You just forgot about it; am I correct, sir?

A No, I didn't forget.

Q You just told the Jury a few moments ago that you forgot about it. You want that read back to you, Mr. Carroll?

A Yes, I think you'd have to. I don't recall saying that.

MR. WASHOR: May I ask the Court to permit the stenographer to read just a few moments ago, when Mr. Carroll told under oath --

MR. WITMER: Excuse me. You're right. I said I might have forgotten. I think I

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recall saying that.

BY MR. WASHOR:

Q You realize --

A It saves time, right.

Q Saved time?

A Yes.

Q Mr. Carroll, you realize, of course, every word that is staid in this Courtroom is stenographically recorded?

A I'm aware of that.

Q It could be no dispute with the stenographic record; am I correct?

A No, I don't think so.

Q Any more than there could be a dispute with the tape recording, Mr. Carroll, am I correct?

Am I correct?

A Yes, you're correct.

Q And when Mr. Rosenbaum on tape said: Don't worry, you'll never have to categorize me that way, I wond't give you up; there can be no dispute abou that either, can there?

A That's what he said.

MR. WASHOR: Your Honor, I have somewhat more to go with the witness on cross-examination.

Would your Honor permit a recess at this time?

THE COURT: For lunch?

MR. WASHOR: I mean that, yes.

THE COURT: Very well. All right. We will recess now until 2:00 o'clock, for lunch.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

Would you please leave the copies of the tr - scripts on the chairs? Thank you.

(Jury excused.)

MR. WASHOR: Your Honor, I have an application in the absence of the jury.

Judge Dooling, my present application does not anticipate any impropriety on any member of the Government in whatever capacity they may be but I am requesting that the witness not be permitted to be spoken with by any agency connected with the Government or any employee of the Government until cross-examination is complete.

That is not becuase I anticipate anybody associated with the Government would lend themselves to any impropriety. I just think in the interests

of justice, that type of cautionary instruction would be appropriate.

MR. GOULD: Your Honor, may I respond to that?

THE COURT: Yes. Certainly.

MR. GOULD: First of all, this is, I believe, the second time that Mr. Washor convenitently buys himself another hour to further bolster his cross-examination, and I don't believe that it is proper to order the Government people not to talk to the witness.

Obviously Mr. Washor can ask Mr. Carroll if he talked to me. What we said.

THE COURT: Well, first, there isn't any talk about another hour. That was --

MR. GOULD: An hour break now.

MR. WASHOR: It's three minutes of 1:00.

THE COURT: It was less than 10 minutes to 1:00, at least by my watch, and the wall clock.

If you are at what might be called a rest in your examination, it is perfectly proper to suggest an adjournment at that time.

Now, as to the second matter, if you had asked for a recess at the close of direct in order to re-organize your notes rather than

commence at once, it would have been granted.

As to the next matter, I believe there is affirmative authority, Mr. Washor, that the Court is -- would commit an impropriety in ordering -- in making any such order.

MR. WASHOR: Then I withdraw the application.

THE COURT: Yes. That does not mean that you are not permitted to inquire as to any conversations with any representative of your adversary during the lunch hour.

MR. WASHOR: Judge, you see, I've had an unpleasant experience, and you usually learn from mistakes.

THE COURT: Let me tell you, Mr. Washor.

MR. WASHOR: I've made mistakes. I like to learn from them, Judge.

I once asked a witness if they spoke to the Government during lunch, and he said yes. And I said: What did he say?

And the witness said to me: We don't have to worry about your cross-examination.

It's horrible. Once is enough. I don't suspect that will happen here, but that was a very,

very trying question.

THE COURT: No. The difficulty is --

MR. GOULD: It's an idea.

THE COURT: -- that at times --

MR. GOULD: I know the answer you will get.

THE COURT: -- defendants -- I mean, witnesses commit woeful indiscretions of improprieties on cross-examination because they think that they are allied with the person who called them, rather than with the truth.

I then becomes the obligation of the lawyer to say: Look, the oath you took to tell the truth applies on cross, as well as on direct.

You never told me any of these things you are saying on cross. Are they true or not? And if you have been telling lies on cross, you had better get back in there and tell that to the gentleman who is examining you.

MR. WASHOR: You just --

THE COURT: That happens.

MR. WASHOR: You've just admonished the witness, if it means anything.

THE COURT: What's that?

MR. WASHOR: No.

MR. GOULD: I object to that assumption --

THE COURT: Excuse me?

MR. WASHOR: I'm saying that if that would be the purpose of the conversation and the obligation --

THE COURT: No. I say, that is one of many reasons why no such order can be made.

MR. WASHOR: All right. I withdraw the application if you feel it is improper. I didn't believe the Government would do anything wrong.

MR. GOULD: I don't know what you consider wrong.

(Luncheon recess.)

AFTERNOON SESSION

(Jury not present.)

THE CLERK: Government tapes marked Exhibit 23 in Evidence and 24 in Evidence.

(So marked.)

THE CLERK: Transcripts marked 23-A for Identification and 24-A for Identification.

(So marked.)

THE COURT: The jury has been raising all kinds of problems about transportation. Some of them are wholly dependent on public transportation and have no cars nor any access to cars.

Mr. Gutman is trying to see if he can set up some car pools within the jury, which is not ideal --

MR. GOULD: And not talk to each other?

THE COURT: Yes.

MR. GOULD: We could hit the road and bring the trial to each one of their homes.

THE COURT: The Marshal's Office cannot do anything about transportation with regard to their homes.

He could try to get hotel rooms for them in Manhattan from which case he could get them transported here. We have not put that to them yet.

THE LAW CLERK: I asked those with serious transportation problems if they were willing to go to

a hotel and although none seemed eager, they said, if need be, they would.

MR. WASHOR: It's disheartening but I suppose it is a problem that has to be solved.

MR. GOULD: Mr. Walsh marked the tapes in evidence and the transcripts for identification. Is that how your Honor handles that?

THE COURT: Yes.

Now, how do you want to do this? Do you want to try to settle it right away and find out from the jury --

MR. WASHOR: I suppose at this hour we should not delay the problem and meet it head on.

If anything breaks favorably, I suppose there will be little or no complaints.

At this point let's kow-tow to the whim of individual jurors as to what will fit their needs best.

THE COURT: It isn't a question of whim --

MR. WASHOR: Some want to come and some do not. You have to be an arbitrator, I suppose.

THE COURT: They are all willing and able to come to the best of their ability. If they have no transportation, they just have not got it. They can't walk from Bayside.

MR. WASHOR: That's right.

There is a parking lot right by the Pierrepont.

THE COURT: Are we supposed to requisition it?

MR. WASHOR: No, but I suppose one of the problems would be if requested, we are talking about a sizeable amount of money and talking about the money for parking --

THE COURT: This wouldn't be sequestration. It would be housing.

MR. WASHOR: I suppose it's cheaper to say we'll pay for the parking.

We have the municipal lot on Smith Street --

THE CLERK: And there is a vast parking lot at the very end of Cadman Plaza West. It's in the street.

If you go out and turn right and go down that street -- it may be called Dougherty Street or something like that -- right in that general area. It's a massive thing.

THE COURT: I don't identify with it at all and I thought I knew the neighborhood.

MR. GOULD: There's a massive parking lot in the middle of Brooklyn?

THE COURT: Let us find out what their wishes are because the Deputy Marshal is coming up to gather the data at 2:30.

MR. WASHOR: I have no real solution, Judge.

THE COURT: All right. When in doubt, plunge

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ahead.

(The jury entered the jury box.)

THE COURT: We were talking about slight problems and that is the reason for the delay.

I hope I didn't set off the alarm. Don't be surprised if you see a lot of Marshals running around. I might have touched the alarm.

As I understand, Mr. Gutman spoke to you informally about whether you thought you could form some car pools successfully to get as far as the building if the Marshal service could assure you of some sort of parking space near at hand.

How many of you would that take care of?

JUROR NO. 8: Including tomorrow?

THE COURT: Yes.

JUROR NO. 8: If necessary, absolutely necessary --

THE COURT: I think it is probably going to be necessary.

JUROR NO. 8: If the LIRR is running, I wouldn't drive in.

THE COURT: Does it come to Flatbush or Penn Station?

JUROR NO. 8: I'm 10, 15 blocks, walking distance from Jamaica.

THE COURT: We heard one ugly rumor that in a

sympathetic way the Long Island may find it is unable to get from Jamaica to Brooklyn.

ALTERNATE JUROR NO. 3: I was talking to an engineer from the Long Island Railroad and he said they would run tomorrow and they were putting out pamphlets on what to do in case of the strike. He said they were running to Jamaica and from Jamaica to Brooklyn and the other points.

THE COURT: Well, that is the nearest to the horse's mouth we have come.

Now, those of you not taken care of, raise your hands.

(Six jurors so indicate.)

THE COURT: Now, the next question is --

JUROR NO. 2: Only if the railway doesn't run.

THE COURT: Assuming that the railroad is going to function -- if we learn at the last moment the railroad won't function, then we have a different kettle of fish. But assuming that the railroad is functioning and the car pools are firmed up, how many of you are taken care of for tomorrow?

(Jurors indicate except for Juror No. 4, Juror No. 7 and Alternate Juror No. 2.)

THE COURT: If the Marshal could get hotel rooms, would you be willing to go home and get your bags and

sleep in Manhattan tonight and from that point the Marshal's Office can bring you in in the morning? That, he can arrange. If he can get hotel rooms, he will do it.

MR. WASHOR: That would include food?

THE COURT: Yes. Nobody would be expected to pay hotel or public eating place prices for food.

ALTERNATE JUROR NO. 2: How about a taxicab? Two of us live in the same locale. It would be cheaper.

THE COURT: I don't know how you can speak that confidently of what the prevailing taxi rates will be or if they will be available.

ALTERNATE JUROR NO. 2: I live near a taxicab place and there are hundreds of them. Assuming I could grab one and pick up my other friend here and get in --

THE COURT: I haven't put it up to the Marshal but I think that probably would compare favorably with Carey's charges, don't you?

ALTERNATE JUROR NO. 2: It would be more reasonable than two hotel rooms.

THE COURT: Well, we can find out about that.

JUROR NO. 5: I would go with this gentleman.

JUROR NO. 6: That wouldn't take care of me unless they go for cab fare to the Jamaica station of the Long Island Railroad. I have no other way to get

there -- assuming that I can call for a cab.

THE COURT: Perhaps you can arrange that in the morning.

JUROR NO. 6: I would try.

THE COURT: Well, let's try that, then.

All right then. We can review the question about what to do if none of this works out tomorrow by telephone or otherwise.

ALTERNATE JUROR NO. 2: As a last resort, I could have a member of my family drive myself down and pick up the young lady but getting home -- unless you can arrange for parking space --

THE COURT: Well, that's the big question because as you can imagine, the parking spaces in this building, such as they are, and under Government control, that has been taken up with the personnel of the court, I'm sure, because they have got to be here somehow.

Like for example, we couldn't do without Government counsel.

MR. GOULD: Thank you, your Honor.

THE COURT: Although fortunately, I believe he is within walking distance as it happens, though Mr. Kay perhaps is not.

Let's see what they can promise us on that,

whether they can get it for us here or somewhere else by use of a heavy voice.

Thank you.

All right.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. WASHOR: (Cont'd.)

Q Mr. Carroll, do you know Sandy Allinson?

A Yes, I do, sir.

Q How well do you know him?

A Not very well -- on a couple of occasions.

Q Over the years?

A Over the years but I can't remember the first time I met him.

Q Do you know Lou Lerner?

A Yes, I do.

Q How often have you met him?

A Number of occasions.

Q And, of course, you know Steve Rosenbaum?

A Yes, I know Mr. Rosenbaum.

Q Do you know Mr. -- for how many years do you know Mr. Rosenbaum?

A Ten, twelve.

Q 1963 -- would that be a reasonable period of time?

A Possibly.

Q How many number of years do you know Sandy Allinson?

A I would say a lot less.

Q How many years do you know Lou Lerner?

A I guess as long as I know Mr. Rosenbaum.

Q Now, there came a time you were designated to be the head of the FHA, am I correct?

A That's correct.

Q How did that come about?

A It was a political appointment.

Q In what manner or form?

A Well, through the Republican party which I had been affiliated with over the years and there was a vacancy in this job and it was suggested, I imagine through Washington to take someone up in Suffolk County that had the experience and I was selected.

Q Would it be fair to say not only the experience but also the integrity?

A Absolutely, most important.

Q Most important?

A Most important.

Q At the time you learned you would get this high position with the Government of the United States, you had already committed the crimes we discussed earlier this morning, stealing bank files and making illegal commitments, is that correct?

A Correct.

Q From the integrity level, did you tell anybody you were not qualified for the job?

A No, I did not.

Q Did you reveal to anybody before you took this high position about your crimes?

A No, I did not.

Q As a result of these illegal commitments made by you in the early part of 1972, did you determine what that financial loss would be to you?

A Yes, I did.

Q And what was the amount?

A Thirty thousand dollars.

Q Had you entered into an agreement with the bank to make up the difference in the loss?

A No, I don't recall that.

Q When you issued these commitments, you were not personally responsible, were you?

A In a vague sense, I was, yes. I wrote them on behalf of the bank but they had no knowledge.

Q The bank could well have not honored these commitments because they were not approved, correct?

A That would have had to have been a court case. I don't know. I imagine they would have had to honor them.

Q Did you tell anybody in the bank you would make them whole and return $30,000 to them?

A There was no loss suffered on behalf of the bank, Mr. Attorney. There was no question of them losing money unless they retained the loans. I said I would get the mortgages out of the bank so there would be no loss.

Q The total amount of the loans, monetarily speaking, was $3,000,000?

A No.

Q Two?

A Two.

Q And Sirote picked up half of them?

A That's right, sir.

Q Wasn't there a directive within the FHA to speed up, expedite the processing of cases to the three, four day period if it was at all possible?

A I don't recall any such directive. If you refresh my memory maybe I can recall it. When was the directive issued?

A During the time period -- the nine months --

MR. GOULD: If he has a document to show the witness --

MR. WASHOR: Attempting to refresh his recollection.

Q During the nine months you were there, was there any type of directive?

A Counsel, I would like to say that during my tenure there was more of a directive to slow down rather than anything -- through Washington, I am talking about -- during this mess.

Q Were you the head of the FHA Hempstead office Christmas 1971?

A Yes, I was.

Q Were you aware that any of the employees of the FHA were receiving Christmas gifts or gratuities?

A Yes, I was.

Q You knew the assignment clerks got the Christmas gifts, correct?

A No, sir.

Q Well, who did you know about Christmas gifts?

A I was told by my boss, if you will, in New YOrk -- I was called down to a meeting --

Q When was that?

A I guess just prior to Christmas.

Q Okay.

A And I was informed at that time that some envelopes were given out through the office and that was my first knowledge of that.

Q Did you find out to whom the envelopes were given?

A Not at all.

Q Did you make any inquiry?

A I was told not to.

Q By whom?

A My head office, they were going to take care of that.

Q So, you were under orders and instructions not to make inquiry?

A That's correct.

Q Were you told to alert anybody not to accept gifts?

A No.

Q You were to forget about it and they would handle it from their end of the investigation, am I correct?

A That's right.

Q Did you ever borrow money prior to February 1972 from anybody?

A Anybody or any bank?

Q Any person?

A No -- oh, yes, I did.

Q From whom?

A Mr. Sirote.

Q When was that?

A Oh, roughly 1965, '6,'7 -- give or take.

Q Were you with a bank at the time?

A With a bank, yes.

Q And Mr. Sirote was a mortgage company holder?

A Yes.

Q Negotiated a loan?

A Yes, I did.

Q How much?

A Five hundred dollars.

Q Paid him back.

A Yes, I did.

Q So, when you went to Sirote this time, you had a prior relationship on borrowing money, am I correct?

A Yes, I did.

Q Anyone else?

A No, sir.

Q Sure of that?

A Positive.

Q You know a fellow like the name of Asher, Larry Asher?

A I know the name I don't associate him with anyone.

Q Ever loan you any money?

A I don't know the name so I can't say.

Q Sirote is the only person in your life you ever borrowed money from -- $500 on a prior occasion?

A Yes.

MR. WASHOR: If the Court would bear with counsel for a moment.

(Pause)

Q Sir, you said you got the $2,000 in the men's room of a diner, correct?

A Yes, sir.

Q No doubt in your mind that cash was in an envelope, am I correct?

A That's correct.

Q And the envelope, was it sealed or not?

A I can't recall at this point.

Q Was it an envelope that had a clear transparent window or the other type of envelope --

A Not the other type, the long legal type white envelope, no markings on it, as I recall.

Q Mr. Rosenbaum didn't give you the envelope at the table, though?

A No.

Q It was his suggestion to go into the men's room?

A Yes, sir

Q When did you first become aware that the FBI was investigating alleged improprieties in the FHA?

A The moment I took the job.

Q They told you that there were improprieties and payoffs?

A There was discussion in the office among employees that there were investigations going on, files being pulled, et cetera. That was my first knowledge of it.

Q You went there in November, was it?

A November 30th.

Q 1971?

A Right.

Q You understood then the conversations of your employees. Did the FBI contact you about pulling files from your office?

A No, I believe it was Washington that did the contacting. They were commanded to pull files, possibly on behalf of the FBI. I don't know the arrangement.

Q When did they come in, in relation to November '71, to your knowledge, to pull files?

A A week, two weeks, a month -- after I got there they were constantly doing it.

Q Did you keep a list of files pulled?

A A list was kept but I did not keep a list.

Q Did you see the list?

A Occasionally.

Q Did you know what files were being pulled at that time?

A All files -- I am sorry -- files from all various brokers were being pulled. No one particular broker.

Q Have you at this point in your testimony told us everything that you did for Sirote at the time that he said he would take one million dollars worth of loans back to help you?

A Have I told you everything, is that what you are asking?

Q Yes, --

THE COURT: I am not sure I understand.

Did you do anything else in consideration of his taking over the million mortgages --

MR. WASHOR: If I may adopt the Court's language.

THE WITNESS: I believe I testified that I had promoted two men for Mr. Sirote.

BY MR. WASHOR:

Q That correct, sir?

A At a later date Mr. Sirote had appeared before Senator Hart's committee in Washington and they had nine files of his and they were making some comment on the nine files. He had come into the office and asked if I would review the nine files, see if there were any irregularities as far as I was concerned and perhaps write a letter if I found none, setting forth the fact that I saw no irregularities and I did this.

Q This was in consideration for what Sirote had done for you, am I correct?

Q You could find nothing wrong with the files?

A This --

A Okay.

Q -- an accurate description of the lack of impropriety in the files independent of what Sirote did for you, correct?

A Yes.

Q Have you told us all that you had done relative to your improprieties, as head of the FHA, during the nine months that you were designated?

A I believe so.

Q Did you ever help anyone else out -- do anything else other than for those people you testified to?

A If you could be more specific as to help. My job was to expedite, override, oversee the problems of the office -- if you are more specific, I can say yes or no to that.

Q Did you ever do anything for anybody and get a gift in return?

A No, I don't recall that at all.

Q You are sure of that?

A Positive.

Q Isn't it a fact that you helped out Mr. Bernstein?

A Harry Bernstein?

Q Yes.

A In what way?

Q Did you help him in any manner or form?

A Mr. Bernstein had asked for various mortgage loan guarantor -- not mortgage loan guarantor -- mortgage insurances if we could expedite them.

Q Did you do it?

A On a couple of occasions, yes.

Q Did you accept anything for that outside your salary?

A Absolutely not.

Q Did you take a trip to Las Vegas?

A I was never there in my life.

Q Were you promised a trip to Las Vegas?

A Mr. and Mrs. Bernstein and myself and my wife and a number of other people were at a Republican dinner in the Town House in Huntington, at that time they got involved -- prior to their indictment -- talking about what the Justice Department was doing to them and if there was anything in my power if I could call someone or knew someone in Washington that they would buy me Las Vegas -- not just take me there.

Q Better than a trip.

A Much better.

Q You acquiesced to this?

A I thought it was lovely.

Q Was there an offer made to you if you could help Louis Bernstein become an approved lender that you would get these $5,000?

A Absolutely not -- Louis Bernstein -- if I could do --

Q Help him become an approved lender, get a bonus of $5,000?

A Mr. Bernstein had nothing to do with him becoming an approved lender. Again it was his discussion -- if I knew any one in Washington to take the heat off

Louis Bernstein. I don't seem to recall the entire conversation -- yes, $5,000 seemed to be a figure.

Q When was this Republican dinner, where you had been offered, as the head of the FHA, Las Vegas and $5,000 -- these discussions when did this take place, sir?

A Well, I imagine that to be some time around election time.

Q November 1972?

A Well, November -- election is usually November 2, thereabouts if I recall.

Q Was it before you were the head of theFHA?

A No.

Q It was after November 3rd, 1971, am I correct?

A That's correct.

Q When you had already become the FHA director, am I correct?

A That's correct.

Q Did you in any manner or form at that time turn these people down, the Bernsteins?

A I had told them it would be impossible.

(Continued on next page.)

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Q Didn't you just testify that you told Bernstein you'd see what you could do?

A No, sir.

Q All right --

A No sir, I let it ride.

Q Did you indicate that you could not help them?

A As a matter of speech I had indicated that it wouldn't be feasible, that I did not know anyone in Washington.

Q Did you report this offer of a bribe to anyone?

A I believe it was reported to the Justice Department.

Q When?

A In September 1973.

Q After you got caught kind of with your pants down; am I correct?

A After I was caught.

Q And that was the first time that you reported this offer of a bribe to you?

A Yes.

Q As an FHA official?

A Yes.

Q Am I correct?

A That's correct.

Q Now Mr. Bernstein -- Mr. Carroll, there came a

time when you were sentenced to jail, correct?

A Well I know, that's correct.

Q You got quite a severe sentence?

A I beg your pardon?

Q You got a severe sentence, ten years?

A That is correct.

Q And that was reduced to five years?

A That is correct.

Q How much time did you serve?

A Approximately 17 months, I believe.

Q Just a little under a year and a half; am I correct?

A I would say a little over a year and a half -- I'm sorry. You are right, a little under a year and a half.

Q Mr. Carroll, the Government of the United States helped you get the reduction of the ten years to the five years, correct?

A I would imagine so. It was a letter that I read that was written to the parole board, yes.

Q And the Government of the United States -- withdrawn.

The reduction of ten years to five years was in Court?

A Excuse me?

Q Am I correct?

A Judge Travia reduced it.

Q Am I right?

A You are right.

Q The Government helped you get that reduction from ten years to five years in the courtroom; am I correct?

A My attorney took credit for it, so I don't know whether or not the Government --

Q I am asking you --

A I really don't know. I really don't know.

Q You do know that the Government of the United States wrote letters on your behalf to the Parole Board; am I correct?

A Again, I just found this out.

You are correct, yes. You are correct.

Q When you say you just found this out, when did you just find it out?

A After I was released from prison. I saw no such letter while I was in prison and at the time of the reduction I saw no such letter.

Q Weren't you told that the Government would write a letter on your behalf and try to get you out as early as possible?

A I don't recall anybody making any promises to me

at all. I mean, ten years is ten years. I don't recall any promises made. In fact, I know there were no promises.

Q By the way, you didn't expect to get a jail sentence did you?

A I had hoped I wouldn't get a jail sentence.

Q Mr. Carroll, didn't the Government also help get you transferred out of West Street, the local prison?

A Yes, they did a very nice job on that.

Q And you thanked the Government for doing that; am I correct?

A I would have thanked anyone.

Q It was pretty horrible in there?

A It was for me.

Q And they had you transferred from West Street to a minimum security place of detention in Allenwood, Pennsylvania; am I correct?

A No.

Q Where did you go?

A Danbury, Connecticut.

Q The Government helped get you transferred; am I correct, sir?

A I would think they -- it's the only way I could get in there with some help.

Q You wrote a letter to the United States Attorney

Mr. Accetta, thanking him for his help, did you not?

A I certainly did.

Q So at least while you were in jail, youknew that the Government took those steps?

A Yes.

Q Am I correct?

A That's correct.

Q And you asked Mr. Accetta to see what he could do to help you with the parole problem?

A I certainly did, yes.

Q Mr. Accetta kept his agreement with you; am I correct?

A There was no agreement on his part.

Q He serviced you, he helped you?

A Yes, I wrote him, I asked him, and yes he did.

MR. WASHOR: Will the Court bear with counsel for a second, please?

THE COURT: Certainly.

(Pause)

Q And after the Government helped you, sir, didn't you then write a letter to Judge Travia and tell -- did you write a letter to Judge Travia?

A Yes, I did.

Q And did you in that letter accuse the United

States Attorney, Mr.Accetta, of making promises to you that were not kept?

A Yes, I did.

Q Did you further write a letter to Judge Travia -- within that same letter, did you accuse the Federal Bureau of INvestigation of making promises to you that they did not keep?

A I did.

Q And didn't you accuse Mr. Anthony Accetta of breaching his public trust?

A I don't remember those words, but you were on the right line.

Q Didn't you accuse the FBI of breaking their promises with you?

A Yes -- excuse me, can I rephrase that for just a moment if it is all right? I didn't say they broke their promise. I said in the letter that the FBI had indicated to me that I would not go to jail. That was my comment. I did say that Mr. Accetta had promised that I wouldn't go to jail.

Q And didn't you further tell Judge Travia that you would not have interposed a plea of guilty had it not been for the promises of the United States Attorney's Office and the FBI?

A Yes, I did.

Q And sir, wasn't every word in that letter an outright lie?

A At this point yes I have to say it was a lie. I reiterated my statement.

Q You lied to a Judge that reduced your sentence from ten years to five years, am I correct? That's a simple yes or no?

A It's a very strong yes or no, if you don't mind.

MR. GOULD: I object to the witness being told he can only answer yes or no.

THE COURT: Yes, he can only answer yes or no if such an answer deals fairly with the question.

MR. WASHOR: I will rephrase the question.

Q When you accused the United States Attorney of making promises that you would not go to jail, did you lie to Judge Travia?

THE COURT: In other words, are you asking him how the United States Attorney in fact promised him that he would not go to jail?

MR. WASHOR: I believe he has already answered that question. He said that that was not a fact and that he had lied.

MR. GOULD: It is repetitive.

MR. WASHOR: Let me rephrase the question, if

I may, with the Court's permission?

Q Did you write a letter to Judge Travia?

A Yes, I did.

Q Did you tell the Judge that the United States Attorney promised that you would not go to jail?

A Yes.

Q In that same letter, did you tell the Judge -- that is Judge Travia -- that the FBI promised you in words or in effect, that you wouldn't go to jail?

A Yes.

Q All right, were promises made to you by the FBI, sir?

A I have to answer that by a different answer. When I wrote the letter from Danbury, Connecticut, this was all very traumatic to me --

MR. WASHOR: Your Honor, I object.

A (continuing) -- I am trying to answer as best as I can. By the time I was --

MR. WASHOR: I will withdraw the question.

A (continuing) -- I would like to explain, Judge.

MR. WASHOR: I know what he would like to do. I would like him to answer the question.

THE COURT: I think we must deal with this as best as we can, because the withdrawal of the question

leaves its evidentiary impact with the jury.

MR. WASHOR: I will rephrase it. I do not intend to abandon the subject matter.

MR. GOULD: I request that the witness be allowed to finish his answer.

THE COURT: No, if counsel agrees to cover the ground by better questions.

MR. WASHOR: I do.

THE COURT: And I might say in a more moderate tone of voice perhaps we will all move ahead a little more equitably.

MR. WASHOR: Surely.

Q Did Mr. Anthony Accetta make any promises that you would not go to jail?

A No, he did not make a promise.

Q Did you write a letter to Judge Travia that Mr. Accetta made promises that you wouldn't go to jail?

A Yes, I did.

Q The letter that you wrote to Judge Travia about that aspect, was that truthful or non-truthful?

A At the time I wrote it I felt it was truthful, yes.

Q In other words, while you were in prison you felt that Accetta had made promises to you?

A Yes, I felt that he made promises, but he hadn't.

Q At the time you were in prison, you felt that the FBI had indirectly made promises to you?

A No promises. They told me that they didn't think I would go to jail.

Q Opinion?

A Strictly opinion.

Q That was your state of mind at that time?

A Yes.

Q Sir, you wrote a thank you letter to Mr. Accetta in March of 1973; am I correct?

A I don't recall. Tell me what the letter was for. What was I thanking him for?

Q For getting you out of West Street.

A I would thank him today.

Q Did you write a letter to him --

MR. GOULD: Objection.

A Yes, I did.

THE COURT: Yes, that has been asked and answered.

Q The time you wrote to Mr. Accetta in March of 1972, thinking that he made a promise to you that he did not keep --

A No, not at that time.

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Q In December of 1973, also nine months later, you further thought that he made a promise he did not keep and that is why you wrote the letter to Judge Travia?

A That's practically right -- that's almost right.

Q Isn't it a fact, sir, that in order to get out of jail you falsely accused the United States Attorney?

A It is not a fact, sir.

Q It is not a fact that you falsely accused the FBI in order to get out of jail?

MR. GOULD: I think it has been gone over several times.

THE COURT: I think the facts have been laid to the jury.

Q Mr. Carroll, did you serve all your time in Danbury?

A Yes, I did.

Q You were never transferred to Allenwood?

A Never to Allenwood.

Q Do you know of the existence, just yes or no, of a letter to the Director of Bureau of Prisons on your behalf?

A Yes, I do.

Q Do you know when that was written?

A No, I don't have the date on that letter. No,

I do not know.

Q Was any fine imposed upon you?

A No, there was not.

Q Was there any probationery term imposed upon you?

THE COURT: In addition?

THE WITNESS: In addition?

Q Yes, in addition to the five years.

A Well, I originally got ten years reduced to five and was --

Q Did you receive any probation?

A No probation.

Q By the way, when you were in trouble and you needed money, did you go to Mr. Bernstein who offered to buy you Las Vegas?

A No sir -- yes, sir, I did go to Mr. Bernstein to purchase some loans.

Q Did he do it?

A No.

Q The very man who offered to buy you Las Vegas, turned you down?

A Yes.

Q But there was one person ready and willing to help you out on a personal level; is that correct, sir?

A Yes.

Q And when that individual could not purchase the mortgage in question, he helped you out financially because of the possible loss of $30,000; am I correct?

A That is correct, sir.

Q Stephen Rosenbaum was not your enemy; am I correct?

A That is correct.

Q It was your friend who loaned you $2,000, was it not?

MR. GOULD: Your Honor, that has been gone over so many times.

THE COURT: Yes. This has been gone over.

MR. WASHOR: I have no further questions.

(Continued on next page)

Reel 2 fol.

REDIRECT EXAMINATION

BY MR. GOULD:

Q Mr. Carroll, you requested the United States Attorney to be transferred to Allentown; is that correct?

A Mr. Accetta and I had discussed the possibility of Allentown, yes.

Q And you wanted to go there; is that correct?

A Absolutely.

Q And did you get transferred to Allentown?

A No, I did not.

Q You also asked Mr. Accetta to arrange so you could be released to a halfway house?

A Yes.

Q Were you released to a halfway house?

A No.

Q You also tried to get your sentence reduced a second time; is that right?

A I wanted out -- I wanted out.

Q Were you successful?

A Eventually.

Q But at the time?

A No, not at the time.

Q And could you explain to the jury why it is at the time that you wrote that letter to Judge Travia that you

felt that perhaps Mr. Accetta had made some promises to you?

A In our many many discussionsI had prior to my going to jail, there was a certain rapport in terms of -- not a friendship or anything of that type -- he was prosecuting me and I was guilty -- as guilty as sin, and I had to go to jail.

However, the question always came up: "Well, it is your first time, and that type of individual, and perhaps we will see what happens."

But emphatically he would say, "There is no promise -- I can make no promises to you" and that's where it left off. And I still had hopes that maybe I would not have gone away.

Q Mr. Carroll, the statements that you gave to the FBI as to Mr. Rosenbaum, were they given before you went to jail?

A Yes, of course.

Q And before the Government wrote any letters on your behalf?

A Yes.

Q Do you remember being interviewed by the FBI on October 9 and August 15, 1972?

A August 9th.

Q And August 15?

A

A I can only say that I remember one such meeting.

Q Do you remember telling Mr. Washor on August 9th that you were completely honest with the FBI?

MR. GOULD: I would like these two documents marked for identification.

THE CLERK: Marked for identification as Government's Exhibits 25 and 26.

MR. WASHOR: May we have a side bar at this time?

THE COURT: This is just for identification.

MR. GOULD: Yes.

MR. WASHOR: I would like a side bar.

(The following took place at side bar:)

MR. WASHOR: I would like to see what he is marking for identification before he proceeds.

MR. GOULD: Surely.

MR. WASHOR: Because I hope it is not some material that we have not gotten.

MR. GOULD: He has copies. It is the August 9th and August 15th interviews.

THE COURT: Do you want to point out the passage to him?

MR. GOULD: I believe whether it was intentional

or not, Mr. Carroll was misled in the morning in his cross-examination and we are going to refresh his recollection.

THE COURT: Are you going to show him what passage?

MR. GOULD: The whole thing.

MR. WASHOR: They can go over whatever they want.

(The following transpired in open court.)

BY MR. GOULD:

Q Do you remember testifying this morning that on August 9th you were completely honest with the FBI when Mr. Washor asked you those questions on cross-examination?

A Yes.

Q I would like you to read very carefully Government's Exhibit 25, the August 9th interview, and Government's Exhibit 26 marked for identification, the August 15th interview with the FBI, and please read them both very carefully line by line. Will you tell me if that refreshes your recollection as to whether you had been completely honest with the FBI on August 9th or August 15th, and please read them carefully. Take all the time you need until your recollection is refreshed, Mr. Carroll.

(Pause.)

A Excuse me, Mr. Gould? Can I interpose something at this moment?

Q Yes.

A There is an exhibit here on 8/9/7?

Now, this exhibit indicates that I was --

MR. WASHOR: Objection.

MR. GOULD: Read it and see if it refreshes your recollection.

A Are you asking me if I told everything? Is hatt what your question is?

Q Could you please read through the whole thing, and particularly the last part. Do not flip through it and please read it.

A I am flipping through the part that I am very familiar with.

Q Mr. Carroll, isn't August 9th the day that you lied to the FBI when you were shown certain files by them; is that correct?

A That is what I wanted to mention, correct.

Q See if your recollection is refreshed if you ever told the FBI on August 9th that you appointed people for Stanley Sirote, that you gave him anything in return.

A I don't see anything on the 9th about my telling the FBI about any promotions.

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Q Do you see anything that refreshes your recollection about what you told the FBI agents when they left that day?

A I would have to go back to the very end of my conversation with the FBI. After they were in on this particular meeting, I denied ever having done anything illegal until the end of the conversation -- at the end of our meeting I at that point admitted that they were my commitments that were issued, that I did discuss the question with Mr. Sirote. The FBI at that point then said to me: "All right, there seems to be a lot of inconsistencies in your testimony and in what you are telling us. Go home, think it over over the weekend, and give us a call MOnday."

Q And they told you that they didn't believe that you hadn't done anything for Sirote like you told them?

A That's right.

Q And you hadn't told them that you appointed people for Mr. Sirote?

A No, I did not.

Q After that, did you see Mr. Accetta?

A I saw Mr. Accetta Monday or Tuesday -- I think the following Tuesday.

Q Did you see the same FBI agents again?

A One or two of them were there, Walter -- I

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forget his name.

Q Would you look at the next one and see if that refreshes your recollection as being the time that you told them everything that happened?

A I honestly don't know what I was supposed to have left out.

Q Did you tell them about your criminal activities on the 15th?

A I told them everything about my criminal activities.

Q When Mr. Washor asked you on cross-examination, I believe you said that you told about Sirote and the appointments on the 9th. That is incorrect, you did not tell them on the 9th?

A I did not.

Q On the 15th you told them about the criminal activity with Mr. Sirote?

A Yes.

Q And with Bernie Roth; is that correct?

A Yes, Bernie Roth would pick up the balance of the $2 million in the mortgage loans.

Q Did he ask for any favors for that?

A No.

Q Did you do any favors for him for that?

A No.

Q Did he ask you about the investigation?

A No.

Q Did you tell him about Pilgrim Funding?

A What did you tell them about Pilgrim Funding?

A I went to Pilgrim, who referred me to an attorney, who in turn lent me $10,000 to pay off this $450,000 worth of mortgages.

Q Did you make out a promissory note?

A I signed a note for the $10,000.

Q Did they get after you to pay it back?

A They were given back approximately $6,000 not too long after the initial loan and then another $1,000 was iven gwhile I was away in prison to repay that loan.

Q How was that loan given?

A From the sale of my house -- my wife's home.

Q Your lawyer was there at the closing to get the $1,000 back?

A Yes.

Q At the same time that you told them about Roth and Sirote and told them about Pilgrim Funding and Harry Bernstein?

A Yes.

Q And you also told them about Stephen Rosenbaum?

A Yes, I did.

Q Could you refresh your recollection on exactly what you told them about Stephen Rosenbaum?

A A I told the FBI pretty much what was said on the testimony at an earlier date that I contacted Mr. Rosenberg --

Q Rosenbaum.

A Excuse me, Rosenbaum, and asked him if he could pick up the 400-odd-thousand dollars' worth of mortgages, at which time he indicated he could not -- his company could not, but he would offer me $2,000 to take any loss in the loss of points.

Q Did you tell them that you never signed any note for a loan?

MR. WASHOR: Objection.

MR. GOULD: If he doesn't remember --

MR. WASHOR: I object as leading the witness.

THE COURT: No --

Q I would ask you to read --

THE COURT: No, ask him "Do you remember," not what is written.

What you told --

MR. GOULD: I will withdraw it.

THE COURT: -- the representatives of the

Government on the 15th about the Rosenbaum transaction.

THE WITNESS: I don't recall whether I did say that there was no signing of a note.

Q Could you refresh your recollection and tell us in detail what you remember telling them about that transaction?

A I indicated to the FBI in this particular meeting that I had never signed any note and that I had never paid any of the money back.

End 2/1
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(Continued on next page.)

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BY MR. GOULD:

Q Anything about the meeting at the diner?

A There was complete information --

Q Would you tell us what complete information?

A Suppose I read this?

Q Tell us from your memory --

THE COURT: If this refreshes your own recollection as to what you said on this occasion, then that is what counsel's question calls for. You can tell the jury.

Q You may read it again to refresh your recollection.

A Let me try to without reading it again.

I contacted Mr. Rosenberg --

THE COURT: Mr. Rosenbaum?

A Mr. Rosenbaum, excuse me.

I contacted Mr. Rosenbaum and asked him if there was any possibility of his taking over some 400 odd thousand dollars worth of mortgages. He said he would let me know at a future date, he had to talk with officers or directors of the company.

He called me or came into my office a very short time after that indicating he could not pick up the mortgages.

However, they are willing to give me $2,000 to offset any loss in the points.

At a later date, a day or two later, I contacted

Mr. Rosenbaum to set up a meeting whereby -- at the diner -- where I could pick up the $2,000. This was accomplished. There was never any note or agreement signed.

Q Did you tell the FBI it was accomplished in the diner?

A Yes.

Q Where?

A In the diner.

Q Where in the diner?

A (No response.)

Q Where was it that you told them?

A Where the money was given to me, in the men's room of the diner.

Q All this was told before you were sent to jail or any letters were written or anything else?

A Yes.

Q So that the first time you were completely honest to the FBI you told them about Sirote and Roth and also Mr. Rosenbaum and several others?

A Yes.

MR. GOULD: At this point, the Government would offer Exhibits 25 and 26 into evidence.

MR. WASHOR: I object. It is not admissible.

THE COURT: Yes, objection sustained.

MR. WASHOR: I would ask the Court to instruct the jury that the objection raised by counsel is not an interference with the Government's right to make certain offers.

MR. GOULD: May I have a brief side bar?

THE COURT: Oh, yes.

(The following took place at side bar.)

MR. GOULD: Your Honor, I assume intentionally this morning a battery of questions were thrown at Mr. Carroll such as: When you said this on August 8th and August 9th -- and holding one of the 302's in his hand, there was confusion. Now, it's important for the jury to be able to see these things, to see what was said August 9th.

THE COURT: You straightened that out in the questioning. It is hopeless hearsay except it refreshes the witness' recollection. It can't be past recollection recorded because it is not his memorandum.

MR. GOULD: It is adopted by him. Past recollection recorded could be written or adopted at the time by the individual --

THE COURT: Did he countersign them?

MR. GOULD: No.

THE COURT: You can go through it one at a time

and straighten it out. I'm afraid that is the only way you can do it without consent.

MR. GOULD: Okay. Thank you.

MR. WASHOR: I believe he has done that.

THE COURT: I thought you had done it pretty well.

MR. GOULD: It's hard to tell.

THE COURT: Oh yes, twelve people are there and we'll never know.

(The following took place in open Court.)

REDIRECT EXAMINATION

BY MR. GOULD: (continuing)

Q Mr. Carroll, you mentioned you had ameeting about Christmas gifts with your boss; did he state what the position of Washington was on Christmas gifts?

A Yes. Of course, he reiterated what we all knew, there were not supposed to be any gratuities, gifts, or so forth around the holidays.

Q When he told you not to interfere, did he tell you that was because he didn't care thatthe gifts were being given?

A No, not at all. He asked that I stay away from it because they had their own legal department that wanted to check into it further. He asked me to step aside for a minute.

MR. GOULD: No further questions, your Honor.

MR. WASHOR: With your Honor's permission, may I?

THE COURT: Yes, surely.

xxx RECROSS EXAMINATION

BY MR. WASHOR:

Q Mr. Carroll, when was the very first time that you told either -- anybody associated with the Government that the reason you disclosed the nature of the investigation into Mr. Rosenbaum, that was being conducted, was when you got the $2,000?

When was the first time you told a member of the Government that is the reason you told them about the investigation?

A I am sorry, I lost my train of thought on that one.

Q If the Court will permit a few primary questions to bring it up to date.

Isn't it a fact, sir, the substance of your testimony is you discussed the FHA investigation with Mr. Rosenbaum only after he gave you $2,000?

A Yes, that is correct.

Q When is the first time that you told any member of the Government about discussing the FHA investigation with

Mr. Rosenbaum?

A I would say sometime in Mr. Accetta's office or Westbury, I don't recall putting it down in any kind of minutes.

Q When you made the statements to the FBI on August 15, 1972, you just testified that you told the truth?

A Yes.

Q Am I correct?

A That is correct.

Q Did you tell the FBI at that time that you discussed the FHA investigation with Mr. Rosenbaum only after you got $2,000?

A No.

Q All right.

You testified in the Grand Jury did you not, sir?

A That's right.

Q You testified on September 14, 1972, am I correct?

A That's right.

Q Do you remember what you testified to in the Grand Jury with relation to Mr. Rosenbaum?

A (No response.)

Q Just yes or no.

A Yes.

Q Did you tell the Grand Jury that you discussed the FHA investigation with Mr. Rosenbaum only after you got the $2,000?

A I don't believe it was phrased that way. I told them I discussed it with him at the time.

Q Sir, would you take a look at the Grand Jury minutes starting on page 65, the top question.

Read the four pages to yourself and let me know when you are complete.

(Pause.)

Q Have you completed reading it?

A Yes, I have, sir.

Q Did you tell the Grand Jury on September 14, 1972, that you discussed the FHA investigation with Mr. Rosenbaum?

A Not a word was mentioned.

Q You were under oath at the time you went into the Grand Jury?

A Yes.

Q Am I right?

A Yes.

Q How many times did you lie to the FBI?

A (No response.)

MR. GOULD: In terms of days or --

MR. WASHOR: I will rephrase the question.

Q You had several meetings with the FBI, is that correct?

A Yes, I have.

Q How many times did you lie to the FBI considering only the number of meetings?

A I would say once or twice the first couple of meetings we had.

Q The only time?

A I did not lie on this particular report, if that is the question.

Q I didn't ask you that.

A No.

Q Didn't you in the Grand Jury tell the Grand Jury that you had a discussion with Stephen Rosenbaum about the FHA investigation only after you got $2,000 from him?

A I didn't say it in this Grand Jury action.

Q Okay.

You said it later on, am I correct?

A Absolutely.

Q This was September 14, 1972, is that correct?

A That is correct.

Q When was your memory better, September 14, 1972, or later on when you again testified in the Grand Jury?

A When the question was posed to me in the Grand

Jury.

Q Sir, did you not do the same thing when you appeared in the Grand Jury September 1972 that you did at the bank, omitted to put in material?

A That I did what?

Q You didn't make records at the bank.

A I see what you mean.

Q Am I correct?

A Yes.

Q You avoided disclosing certain facts, am I correct?

A Yes.

Q Isn't it the same thing you did September 14, 1972?

A (No response.)

Q Avoided to mention that you had a discussion with Mr. Rosenbaum about the investigation only after you got the $2,000 cash from him?

A I didn't purposely eliminate that.

Q That was by accident, is that correct?

MR. GOULD: Objection.

A It was never brought out.

Q It was never brought out to you?

A That is correct.

Q The one asking you questions, that was an

Assistant United States Attorney, am I right?

A Yes.

Q When you failed to mention the very same things we are discussing now to the FBI on August 15, 1972, would your answer be the same because it was never brought up?

A That is correct. It was never brought up. The discussion I had with Mr. Rosenbaum didn't seem --

Q Is it your testimony as you sit here this afternoon both FBI and the United States Attorney's offices, prior to putting you into the Grand Jury to testify under oath, never asked you what you got in return for the $2,000?

A (No response.)

Q Withdrawn.

Is it your testimony as you sit here now that members of the United States Attorney's office and members of the FBI did not ask you what you gave in return for $2,000 received from Stephen Rosenbaum?

MR. GOULD: Your Honor, at this point may I ask Mr. Washor not scream at the witness --

MR. WASHOR: I am not screaming, we don't have to dilute the question.

Can you answer the question?

A I did not purposely leave it out if that is what you mean.

Q Can you answer my question?

A Which was?

Q Is it your testimony no member of the FBI asked you what you gave Mr. Rosenbaum in return for the $2,000?

A Yes, I believe they did ask me.

Q When?

A Meetings and various discussions we had.

Q Did they ask you on August 15 when you told 100 per cent of the truth?

A No.

Q September 14, 1972, under oath when you went before the Grand Jury?

A No, they did not.

Q All right. Nobody at that time asked you what you gave Mr. Rosenbaum in return for the $2,000?

A Right. I would say that is true.

MR. WASHOR: I have no further questions.

RE-REDIRECT EXAMINATION

BY MR. GOULD:

Q When you were interviewed by the FBI or the United States Attorney's Office, at any time did you go into complete details about any of the events you talked about today in every little detail?

A As best I could. There has to be meeting after

meeting.

Q In the Grand Jury of September 14, 1972 you testified quite a long time, didn't you?

A Yes.

Q About how much of that testimony was asked about Springfield?

A As I recall, very little.

Q Were you asked anything about the meetings at the diner or anything else?

A I don't believe I was asked at all. It was just what was the situation and I told it as I recall with respect to Mr. Rosenbaum.

Q Do you remember testifying February 13, 1973 before the Grand Jury?

A Yes, I remember.

Q Would you tell us what the subject of that examination was, what you were asked about?

A It was --

Q What company?

A This is a Grand Jury with Springfield Equities.

Q Were you asked anything about Girote or --

A No. I said this Grand Jury minutes was a discussion on Springfield Equities and that particular arrangement of the $2,000.

Carroll-redirect

Q Do you recall being asked by the Assistant United States Attorney as to why you had the discussion about the investigation with Mr. Rosenbaum and do you remember what your answer was?

A I was asked by Mr. Accetta if he felt I was influenced by virtue of the payment that Mr. Rosenbaum had made to me. My reply was, "I do."

Q Is it true?

A Yes.

Q Before that did he ask you another question? Refresh your recollection and read it. Tell us what that question and answer were and whether it was truthful.

A The question posed to me by the attorney was that -- was my discussion with Mr. Rosenbaum concerning the details concealed because of the money which Mr. Rosenbaum advanced to you, and I said, "Very much so."

Q Generally, in that Grand Jury testimony, did you talk about the discussion with Mr. Rosenbaum and other details you talked about today?

A The conversation again went along the lines of what was happening with the investigation going on and I reiterated to him all files were being pulled from various mortgage companies.

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(Continued on next page)

3pm2 Carroll-redirect

Q In 1972, you were asked about a lot of different transactions?

A Yes.

Q In 1973 the transactions of Springfield?

A That's right.

MR. GOULD: No further questions.

MR. WASHOR: I don't know if the Court will allow but I will be very brief.

THE COURT: Certainly.

MR. WASHOR: Thank you.

RECROSS EXAMINATION

BY MR. WASHOR:

Q You just on redirect examination said that you were not asked about any particulars when you testified September 14, 1972, related to MR. Rosenbaum, am I correct?

A That is correct. Particularly with regard to the conversations or anything that we had.

If I recall my testimony, I did mention that the money was received and the circumstances surrounding it.

Q Do you remember Mr. Gould just a few minutes ago asking you whether or not you mentioned anything as to why you got the money and how you got the money?

Carroll-recross

A In which testimony?

Q September of 1972.

A All right, one question --

THECOURT: Excuse me.

A Is that the testimony?

THE COURT: The first of the two.

THE WITNESS: Thank you, your Honor.

THE COURT: That is not Mr. Washow's question.

Q Do you remember Mr. Gould asking you?

A Yes, I recall Mr. Gould asking me.

Q Your answer was no?

A Right.

Q You didn't tell them where the money was or how you got the money?

A Yes.

Q Just a few questions were asked of you in the grand jury?

A With respect to Springfield Equities, yes.

Q Isn't it a fact you were asked the following questions and gave the following answers on September 14, 1972 -- reading from page 66:

"Question: Did there come a time when you in fact received $2,000 from Mr. Rosenbaum?

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"Answer: Yes, there was. I took the $2,000 from him.

"Question: Where were you when you took the money from Mr. Rosenbaum?

"Answer: I met Mr. Rosenbaum in a diner on Merrick Road and Jerusalem Avenue, at the corner of Jerusalem Avenue and Hillside Avenue, approximately 9:00 o'clock in the morning on a Saturday."

Do you remember being asked those questions and giving those answers?

A Yes.

Q You did discuss where you got the money, am I correct?

A Yes.

Q Mr. Carroll, weren't you told in 1973 that you had to have a reason for taking the $2,000?

MR. GOULD: Objection, your Honor. By whom? When? Where?

MR. WASHOR: Let's first find out whether he was told.

THE COURT: I think you have to ask him: Were you ever told, if I may rephrase the question, that you have to have a reason for accepting the $2,000?

A There has to be a reason for taking anything.

THE COURT: No. Lister carefully to the question. His question is, did anyone ever tell you or say to you that you had to have, have had, a reason to take the $2,000?

THE WITNESS: Yes, your Honor, I understand.

How did you phrase that? It was -- when the questions and answers came up about the $2,000 per se, why d[illegible] take the money -- this was pretty much understood and the only other question was what did I do for the money if anything. That was the question. That was part of that testimony.

Q Sir --

A Yes?

Q February 25, 1972, hadn't the newspapers of the City of New York been flooded with headlines of the FHA and VA investigation?

A I don't recall that.

Q You have no independent recollection?

A No.

Q It was all over the newspapers and you have no recollection?

A No.

Q Is it your testimony, sir, that you got

$2,000 from Stephen Rosenbaum in return for your telling him the files were being pulled from the FHA?

A No.

Q Did you tell him the names of any files?

A No, I didn't know any.

Q Did he ask you the names of any files?

A Only the companies, not the names.

(Pause.)

MR. GOULD: One question.

REDIRECT EXAMINATION

BY MR. GOULD:

Q Did anybody from the Government ever tell you to make any statements or any testimony that wasn't truthful?

A Of course not.

MR. GOULD: No more questions.

(Pause.)

MR. GOULD: Is that it?

THE COURT: Just a mome.

MR. WASHOR: I have no further questions.

MR. GOULD: May I dismiss the witness?

THE COURT: After he is dismissed by opposing counsel.

MR. GOULD: I thought --

MR. WASHOR: I have no further questions at this time.

Excuse me, your Honor. The letter written by the witness to Judge Travia, I would offer that letter into evidence as a defense exhibit.

THE COURT: I will have to read it first.

MR. GOULD: The Government would then also have certain -- for example for completeness sake I believe required under the new rules we would have other parts of the correspondence.

I don't hear the Government.

THE COURT: We will have a short recess now.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

THE CLERK: Please rise.

(The jury left the courtroom.)

MR. WASHOR: I suppose you would like to look at the letter?

THE COURT: I was wondering why you offered it. What is the point of the offer?

MR. GOULD: Your Honor --

MR. WASHOR: I am making the offer, let me complete it. I tender for the Court's perusal a

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-856

STEPHEN ROSENBAUM, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

April 13, 1976

B e f o r e :

HONORABLE JOHN F. DOOLING, U.S.D.J.

FRANCES KARR
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID GOULD, ESQ.
-and
JEFFREY KAY, ESQ.
Assistant U.S. Attorneys

MICHAEL WASHOR, ESQ.
Attorney for Defendant

THE COURT: Members of the jury:

You have heard the evidence in the case and the arguments of counsel and now must receive the instructions on the law that governs the case.

You, the jurors, are the sole judges of the facts. You must, however, follow the law as given to you in these instructions and apply it to the facts as you find them from the evidence before you. You are not free, nor am I, to substitute our private judgments as to what the law should be for what the law in fact is.

You have been sworn as jurors well and truly to try this case and to render a true verdict. You must therefore exclude from your deliberations all bias and prejudice. You must not permit yourselves to be governed by sympathy or any other considerations not founded in the evidence and these instructions on the law.

The issues of fact to be tried are those made by the indictment and the defendant's plea of "Not Guilty." Bear in mind that the indictment is the formal method of accusing a person of crime; it is not itself evidence that a defendant committed the crime charged, nor is the fact that the indictment was found any evidence of guilt.

There are four counts in the indictment and the first and the fourth counts are conspiracy counts. These two conspiracy counts I think will best be understood if they are considered in these instructions after counts 2 and 3, which are called the substantive counts, have been considered.

Count 2 of the indictment is drawn under Section 201(f) of Title 18, United States Code, which, so far as we are concerned with it, provides as follows:

"Whoever, otherwise than as provided by law for the proper discharge of official duty, directly ... gives ... anything of value to any public official ... for or because of any official act performed or to be performed by such public official...shall be fined...or imprisoned ...or both."

Count 2 reads as follows:

On or about the 26th day of February 1972, within the Eastern District of New York, the defendant Stephen Rosenbaum knowingly and unlawfully did directly give approximately two thousand dollars $2,000.00) to Donald Carroll, who was then and there a public official employed as Director of the Hempstead Insuring Office by the Federal Housing Administration of the Department of Housing and Urban Development, an agency

of the United States, for and because of official acts performed and to be performed by the said Donald Carroll in connection with his employment at the Federal Housing Administration. (Title 18, United States Code, Section 201(f).

You will have noticed the first clause in the statute. It reads "Whoever" -- and the next words are those which I want to emphasize at this moment -- "otherwise than as provided by law for the proper discharge of official duty."

That clause is put in to make it clear that lawful fees properly paid to public officials -- such as filing fees and things of that sort -- are not payments forbidden by this part of the statute. Count 2 is concerned with the alleged payment of $2,000 to Donald Carroll, and there is no suggestion on either side that the money, if any, that was paid to Donald Carroll was a fee or other payment provided by law for the proper discharge of his official duties. What we are concerned with then is whetheror not there was a direct giving of anything of value to Donald Carroll for or because of any official act performed or to be performed by Donald Carroll.

The essential elements of Count 2 of the

indictment all of which the Government must prove beyond a reasonable doubt or else you must acquit the defendant on Count 2 of the indictment are the following:

First, that defendant did deliver $2,000 in currency to Donald Carroll on or about February 26, 1972;

Second, that Carroll was at the time employed as Director of the Hempstead Insuring Office of the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, and that defendant knew that fact at the time that he delivered the $2,000 in currency to Donald Carroll; and

Third, that defendant delivered the money to Carroll for or because of an official act or acts performed or to be performed by Carroll in his employment at the Federal Housing Administration.

If the Government proves each of the three essential elements of Count Two beyond a reasonable doubt, then you will convict the defendant on Count 2 of the indictment. If, however, the Government fails to prove one or more or all of the essential elements of Count 2 of the indictment beyond a reasonable doubt, then you must acquit the defendant of Count 2.

You must first determine from the evidence the

facts affecting this transaction. You must decide whether or not you find beyond a reasonable doubt that defendant delivered the money to Carroll. You must next determine whether or not the evidence satisfies you that Carroll was at that time Director of the Hempstead Insuring Office of the FHA, and whether or not you are satisfied that defendant knew that he held that position.

There has been evidence on the question of whether or not Carroll or defendant or both regarded the money turned over to Carroll as a loan or as an amount which, although not strictly a loan, Carroll expected to repay. I must remind you of the language of the statute: the statute forbids giving "anything of value to any public official." To make a loan is to give something of value. It is a giving of credit. The fact that repayment is expected, with or without interest, is beside the point. Making the loan or advance of monies, no matter what the terms, remains in and of itself the giving of a thing of value. In the simplest words it is doing something for another person that was worth something to that other person.

Turning now to the third element: first, you must be clear that what Carroll thought he was getting

the money for is not material. The decisive question is what purpose the defendant had in mind in delivering the money to Carroll, if he did do so. To convict you must be satisfied beyond a reasonable doubt from the evidence bearing on the question that defendant delivered the money to Carroll because he was Director of the Hempstead Insuring Office of FHA and because of the official acts which in that office Carroll performed and would in future perform.

The statute, the instruction just given, and the language of Count 2 require that the "thing of value" be given to the public official "because of any official act performed or to be performed by such public official." You will notice that it does not say anything about getting the public official to do something illegal, or something that, but for the giving of the thing of value, he would not have done, or would have done directly. On the contrary, the statute prohibits giving some of value to an official simply "because of" his past or future official acts. That is, the giving of the thing of value is forbidden if it is being given because the official has performed some official act or because he is to perform it wholly without reference to whether or not any specific thing

has been requested or exacted by the person giving the thing of value. The statute is violated if a public official has been given money, for example, for doing exactly what he is supposed to do, in exactly the way he is supposed to do it, because the integrity of government requires that no things of value be paid to public officials in connection with their performance of their services other than fees provided by law and the salaries that the government pays to them.

Let me now repeat to you the essential elements of the charge of count 2.

The essential elements of Count 2 of the indictment all of which the Government must prove beyond a reasonable doubt or else you must acquit the defendant on count 2 of the indictment are the following:

First, that defendant did deliver $2,000 in currency to Donald Carroll on or about February 26, 1972;

Second, that Carroll was at the time employed as Director of the Hempstead Insuring Office of the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, and that defendant knew that fact at the time that he delivered the $2,000 in currency to Donald Carroll; and

Third, that defendant delivered the money to

Carroll for or because of an official act or acts performed or to be performed by Carroll in his employment at the Federal Housing Administration.

If the Government proves each of the three essential elements of Count 2 beyond a reasonable doubt, then you will convict the defendant on count 2 of the indictment. If, however, the Government fails to prove one or more or all of the essential elements of count 2 beyond a reasonable doubt, then you must acquit the defendant of count 2.

Count 3 is a different sort of count. The statute under which count 3 is drawn provides that

"Whoever, directly or indirectly, corruptly ... offers ... anything of value to any public official ... with intent

(1) to influence any official act

"shall be fined or imprisoned ... or both, and may be disqualified from holding any office of honor, trust, or profit under the United States."

Count 3 reads as follows:

"In or about December 1970, within the Eastern District of New York, the defendant Stephen Rosenbaum corruptly did, directly and indirectly, offer something of value to Rose Cohen, who was then and there a public

official employed as Assignment Clerk in the Hempstead Insuring Office by the Federal Housing Administration of the Department of Housing and Urban Development, an agency of the United States, with intent to influence official acts of the said Rose Cohen in connection with the assignment and processing of applications for mortgage insurance submitted to the said Federal Housing Administration. (Title 18, United States Code, Section 201(b)."

You will notice at once that this part of the statute differs radically from the part with which we were concerned in count 2. Here the statute requires that the act be done "corruptly," that is, with the deliberate intention of getting that done which should not be done and which itwas improper or illegal to have done. In this statute the thing of value which is given must be found to have been given with the intent to influence the recipient's performance of some official act. You will see then that the idea is to forbid the corrupt giving of a thing of value to a public official to influence him in his action as a public official. And this part of the statute proscribes offers as well as actual payments.

The essential elements of Count 3 all of which the

Government must establish beyond a reasonable doubt or else you must acquit defendant of Count 3 are the following:

First, that the defendant directly or indirectly offered Rose Cohen money or something else of value knowing that she was and while she was an official employed as an Assignment Clerk by the Hempstead Insuring Office of the Federal Housing Administration of the Department of Housing and Urban Development;

Second, that the money or other thing of value was offered to Rose Cohen in order to influence her acts as Assignment Clerk in connection with her assignment of appraisers on cases presented to the FHA for mortgage insurance; and

Third, that the money or other thing of value was offered to Rose Cohen corruptly, that is, knowing that it was wrong to do it, and intending by doing it to influence Rose Cohen to do what she might not otherwise have done.

If the Government proves each essential element of Count 3 beyond a reasonable doubt, then you will convict defendant on count 3 of the indictment. If, however, the Government fails to prove any one or more of the elements of count 3 beyond a reasonable doubt then

you must acquit the defendant on count 3.

Notice here at least three things that sharply differentiate the offense with which defendant is charged in count 3. In the first place, as I pointed out above, you must find that the action was corrupt. In the second place it must be done with the intent to influence an official act or more than one official act. It would not be enough for the Government to show that the thing of value or things of value were offered "because" of official acts performed or to be performed. Here you must find beyond a reasonable doubt that the thing or things of value was or were offered specifically to influence official acts. That in turn means that the offer must be to a person who has responsibility for the performance of an official act and whose decision with respect to whether that act shall or shall not be done can be influenced by the receipient's will. In Count 3 you will note that the language is very specific, that is, you must find that the Government has established beyond a reasonable doubt that the offer or offers were with intent to influence Rose Cohen in connection with the assignment and processing of applications for FHA mortgage insurance.

It is for you to say on all of the evidence whether you find beyond a reasonable doubt that defendant offered something of value, either himself directly or indirectly through someone else, to Rose Cohen to influence her in the assigning of applications for mortgage insurance submitted to the FHA. I believe that there is no disagreement that the particular field of activity in which Rose Cohen functioned was in the capacity of Supervisory Assignment Clerk, and that her duties included designating the outside appraisers to be assigned, to inspect and report on the properties submitted to the FHA for mortgage insurance. So you must determine whether or not you are satisfied that something of value was offered to her directly or indirectly by defendant for the purpose of influencing Rose Cohen in making assignments of fee appraisers to inspect and value properties in which Springfield Equities was the interested mortgage company.

Next, notice that we are dealing here with offers. The Government need not show that any money was actually paid over to Rose Cohen or any other thing of value actually turned over to her. The point here is that the offer was made and to convict you must find beyond a reasonable douct simply that an offer was made

or else you must acquit.

Finally, the Government must show beyond a reasonable doubt that the activities charged to the defendant were corrupt. That means, in this context, that it was done for the purpose of influencing Rose Cohen in her performance of her official duties in order to serve an interest of the defendant's that was opposed to the interest of the Government. That means here that you must be able to find beyond a reasonable doubt that the purpose of the offer was to get Rose Cohen to appoint specifically requested appraisers.

Counts 1 and 4 of the indictment are both drawn under the conspiracy statute Title 18, United States Code, Section 371. Count 4 is simpler in structure and let us consider that count first, after a brief explanation of the statute and an outline of what the crime of conspiracy, generally speaking, comprises.

Section 371, so far as we are concerned with it, provides

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall

be fined ... or imprisoned ... or both."

Count 4 of the indictment charges that defendant Rosenbaum conspired with Hahn and Holmberg to commit offenses against the United States, that is, to commit offenses under Title 18, United States Code, Section 201(f), the subdivision of the statute which we considered in Count 2 relating to the payment allegedly made to Donald Carroll. Count 4 reads in the following language:

In or about and between September 1970 and January 1972, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Stephen Rosenbaum and Andrew Hahn and Douglas Holmberg, herein named as co-conspirators but not as defendants, conspired to commit offenses against the United States, namely, to pay and cause the payment of sums of money and other things of value to officials of the Federal Housing Administration of the Department of Housing and Urban Development for and because of official acts performed and to be performed by the said officials in violation of Title 18, United States Code, Section 201(f).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant Stephen Rosenbaum and the

co-conspirators committed, within the Eastern District of New York, the following:

Overt Acts

(1) In or about December 1970, the co-conspirator Douglas Holmberg, at the direction of the defendant Stephen Rosenbaum, gave money and other things of value to officials of the Federal Housing Administration.

(2). In or about December 1971, the defendant Stephen Rosenbaum met with the co-conspirator Andrew Hahn and approved a list of Federal Housing Administration officials to be given money and other things of value. (Title 18, United States Code, Section 371).

Count 1 is more complex. It alleges that defendant Rosenbaum conspired with Holmberg, Hahn, Ozer and Schlamm of Springfield Equities, Ltd., with the speculators Ortrud Kapraki and Adolfo and Gus Farinella, with Veterans Administration officials, McDonnell and Assatlee, and with the appraisers Orloff and Kessler to defraud the Veterans Administration and to commit offenses against the United States both under Section 201(b), which we considered in Count 3, and under Section 201(f), which we considered in Count 2. Count 1 is rather long, but I think that with the

evidentiary background that you now have you will be able to follow it. Count 1 reads in the following language:

"Commencing at a time prior to September, 1970, the exact date being unknown to the Grand Jury, and continuing thereafter through at least April 1972, within the Eastern District of New York, the defendant Stephen Rosenbaum and Douglas Holmberg, Andrew Hahn, Leon Ozer, Pauline Schlam, Ortrud Kapraki, Adolpho Farinella, Gus Farinella, Alan Orloff, Harold Kessler, Charles Assatly, Hugh McDonnell, and others, herein named as co-conspirators but not as defendants, conspired to defraud the Veterans Administration, an agency of the United States, in the operation of its loan guaranty program, and conspired to commit offenses against the United States, namely to pay and cause the payment of bribes and gratuities to officials of the Veterans Administration in violation of Title 18, United States Code, Section 201.

It was part of the conspiracy that the d endant Stephen Rosenbaum, for and on behalf of customers of Springfield Equities Ltd., did give and cause to be given bribes and gratuities in order to procure unlawful benefits on applications for mortgage insurance

submitted to the Veterans Administration on properties located within the Eastern District of New York, among which unlawful benefits were included the procurement of excessive, inflated and false values of real property, the expedited processing of papers and documents submitted to the Veterans Administration, the approval of credit applications containing false, misleading or omitted material facts, and improper assignment, processing and review of applications for mortgage insurance.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant Stephen Rosenbaum and the co-conspirators committed, within the Eastern District of New York, the following:

Overt Acts

(1) In or about March 1971, the defendant Stephen Rosenbaum met with the co-conspirator Douglas Holmberg and discussed the assignment of appraisers.

(2) In or about August 1971, the co-conspirator Andrew Hahn met with the defendant Stephen Rosenbaum concerning the payment of money to the co-conspirator Hugh McDonnell.

(3) In or about January 1972, the defendant

Stephen Rosenbum had a telephone conversation with the co-conspirator Harold Kessler concerning the appraisals of certain properties on which applications for mortgage insurance would be and were submitted to the Veterans Administration.

(4) In or about January 1972, the defendant Stephen Rosenbaum met with the co-conspirator Ortrud Kapraki concerning her business relationship with Springfield Equities, Ltd.

(5) On or about February 25, 19'], the co-conspirator Andrew Hahn delivered a sum of money to the co-conspirator Charles Assatly.

(6) On March 2, 1972, the defendant Stephen Rosenbaum and the co-conspirator Leon Ozer met with Samuel Berman and discussed unlawful activities in connection with the procurement of mortgage insurance from the Veterans Administration.

(7) On or about March 14, 1972, theco-conspirator Pauline Schlam had a telephone conversation with Samuel Berman concerning the assignment of the co-conspirator Alan Orloff to appraise a property on which an application for mortgage insurance would be submitted to the Veterans Administration.

(8) On March 23, 1972, the defendant Stephen Rosenbaum met with Thomas F. Jones concerning the

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(6) On March 2, 1972, the defendant Stephen Rosenbaum and the co-conspirator Leon Ozer met with Samuel Berman and discussed unlawful activities in connection with the procurement of mortgage insurance from the Veterans Administration.

(7) On or about March 14, 1972, the co-conspirator Pauline Schlam had a telephone conversation with Samuel Berman concerning the assignment of the co-conspirator Alan Orloff to appraise a property on which an application for mortgage insurance would be submitted to the Veterans Administration.

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(6) On March 2, 1972, the defendant Stephen Rosenbaum and the co-conspirator Leon Ozer met with Samuel Berman and discussed unlawful activities in connection with the procurement of mortgage insurance from the Veterans Administration.

(7) On or about March 14, 1972, the co-conspirator Pauline Schlam had a telephone conversation with Samuel Berman concerning the assignment of the co-conspirator Alan Orloff to appraise a property on which an application for mortgage insurance would be submitted to the Veterans Administration.

(8) On March 23, 1972, the defendant Stephen Rosenbaum met with Thomas F. Jones concerning the

submission of a mortgagor's credit application to the Veterans Administration, (Title 18, United States Code, Section 371).

Before considering Counts 4 and 1 further, it is important to know what conspiracy is.

Conspiracy is an offense separate from the commission of any offenses that may have been committed pursuant to the conspiracy. That is because the formation of a conspiracy, of a partnership in criminal purposes, is in and of itself pronounced a crime by the statute. A conspiracy is a combination or agreement of two or more persons to accomplish an unlawful purpose by their concerted action. The essence of the charge of conspiracy is first, an understanding among two or more persons that they will act together to accomplish a common objective which they know is unlawful, plus, second, the doing of an overt act in furtherance of the conspiracy. The understanding does not have to be a formal or express one. The understanding essential to the finding of a conspiracy exists if by whatever means, tacit or outspoken, the alleged members of the alleged conspiracy have arranged to unite their several efforts to accomplish a common object that they know is unlawful.

One may become a member of a conspiracy without having full knowledge of all of the details of the conspiracy, and without knowing the identities of the other conspirators. But a person who, having no knowledge of a conspiracy, acts in a way which furthers some object of the conspiracy, does not thereby become a conspirator.

Before you may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was formed, and that the defendant, or other person who is claimed to have become a member, helped to carry the plan forward knowing the principal terms of the plan and that it was unlawful and having the intent to advance or further some object of the conspiracy.

One who so joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy. It is not necessary that all of the named conspirators become such at the same time nor is it necessary that they all continue in the conspiracy until it ends.

The overt act required to be proved may be an act which, considered by itself, is an innocent act.

It need not be an act of the particular defendant charged or an act known to him, and it be an overt act committed before they became members of the conspiracy. But the overt act must be one of the overt acts alleged in the indictment and it must be committed by one of the conspirators with the conscious purpose of furthering the achievement of the objective of the conspiracy. And the overt act must have been performed before the particular defendant ceased to be a member of the conspiracy.

Withdrawal from a conspiracy after it has been formed, and after one has become a member of it knowing its significant terms and its illegality, and after an overt act in furtherance of the conspiracy has been committed, does not prevent one from being guilty of the conspiracy.

As you can see, then, there are three ideas in statutory conspiracy: First, was the conspiracy described in the indictment formed; second, was the defendant a member of the conspiracy; and third, did one of the conspirators do at least one of the overt acts alleged in the indictment.

Let me direct your attention particularly to the second point: Was the defendant a member of the conspiracy?

That must be proved by the sworn testimony presented to you here in court of persons who observed he defendant himself do and say the things and words that, if you accept the testimony as true, would establish the defendant's knowing participation in the conspiratorial plan. You may rely, too, in this connection on defendant's own words presented to you by tape recording if you are satisfied that the recordings are authentic and fairly present defendant's words in their real context. You may not rely on second-hand, or, as it is called, hearsay evidence of a witness to the effect that someone else told him that defendant was a participant in the conspiratorial plan or to the effect that someone else allegedly repeated to the witness things that defendant allegedly did or said outside the presence of the witness.

If, however, you find from the evidence beyond a reasonable doubt that defendant did become a member of the conspiracy, then defendant is responsible for those acts and words of the other members of the conspiracy that you find that they did and said in order to effect the objects of the conspiracy just as if he had himself done those acts and spoken those words.

In this connection bear this, too, in mind:

Merely because defendant was in supervisory charge of some of the Springfield employees, to the extent that he was, does not mean that he is responsible for improper acts of those employees unless he was himself consciously involved in the impropriety.

Count 4, as I said earlier, charges that defendant Rosenbaum conspired with Andrew Hahn and Douglas Holmberg to commit offenses against the United States by conspiring to pay or cause the payment of sums of money and other things of value to FHA officials for and because of official acts performed and to be performed by those officials, in violation of Title 18, United States Code, Section 201(f). The terms used in count 4 are the same terms used in count 2 relating to the payments to Donald Carroll. Again, bear in mind that the underlying statute involved, Section 201(f), is concerned simply with the paying of money to public officials "because of any official act performed or to be performed by such public official" and the statute does not say nor require that the payment be made in order to influence the public official's action or to get the official to do anything illegal or anything that, but for the giving of the thing of value, he would not have done or would have done differently.

Bear that in mind in considering whether or not the payments referred to in count 4, if made, would have violated Section 201(f).

The essential elements of count 4 of the indictment all of which the Government must prove beyond a reasonable doubt or else you must acquit the defendant on Count 4 are the following:

First, that the defendant conspired with Douglas Holmberg or Andrew Hahn or with both of them to pay or cause the payment of money or other things of value to various FHA officials for and because of official acts performed and to be performed by them; and

Second, that one of the overt acts alleged in Count 4 was done by one of the conspirators in order to effect the object of the conspiracy.

If the Government proves beyond a reasonable doubt both of these essential elements of the conspiracy you will find the defendant guilty of count 4. If, however, the Government fails to prove either one or both the elements of the charge of count 4 beyond a reasonable doubt then you must acquit the defendant on count 4.

You will no doubt recall from the evidence that Andrew Hahn and Douglas Holmberg are not claimed in the

Government's evidence to have been employed by Springfield Equities, Ltd. at the same time, but that Hahn succeeded Holmberg at Springfield. Hence you will understand that the conspiracy alleged does not require a showing that Holmberg and Hahn were partners in the conspiracy at the same time. However, the proof must be that there was the conspiracy charged in the indictment which continued, although with a changing membership, that is, with one member replacing another. If you are not so satisfied, then you must acquit on Count 4, for the Government must prove the conspiracy alleged in the indictment.

It is for you to say on all the evidence that you have heard, including that relating to the alleged distribution of envelopes containing Christmas gifts of money among the FHA officials, whether or not defendant conspired with Hahn and Holmberg or one of them to give money or other things of value to FHA personnel for or because of their past and future official acts, and whether one of the overt acts alleged in the indictment was done by one of the conspirators to effect the object of the conspiracy. If you decide that defendant did so conspire, then he is responsible for whatever Holmberg and Hahn did in carrying out the objects of

the conspiracy as well as for those things, if any, which you find that he himself did in carrying out the conspiracy.

Turning now to the conspiracy alleged in count 1: The opening paragraph of Count 1 uses a pair of shorthand expressions in referring to the provisions of Section 201 of Title 18, United States Code. One of these shorthand terms is "bribes," which refers to subdivision (b), which we have dealt with in considering count 3, the Rose Cohen count. The other shorthand term is "gratuities," which refers to subdivision (f) which we have considered in discussing Count 2, the Donald Carroll count. In addition, the opening paragraph speaks broadly of conspiring to defraud the Veterans Administration. That language comes directly from Section 371, the general conspiracy section. The fraud charged appears from the second paragraph, which in effect alleges that the conspiracy included fraudulently inducing the VA to issue commitments to insure mortgages. The charge is that a fraud was perpetrated on the VA by deceptive acts and practices as outlined in the language of the next following paragraph. The charging language of Count 1 includes also ideas from Section 201(b) that we have not directly

dealt with in considering Count 3, the Rose Cohen count. Section 201(b), in addition to proscribing the corrupt offering of anything of value to any public official with intent to influence any official act, proscribes also any corrupt giving of anything of value to a public official to influence that official to commit or to aid or to collude in or to allow any fraud on the United States, and subsection (b) further proscribes the corrupt giving of anything of value to a public official with the intent of inducing the public official to do or omit to do any act in violation of the official's lawful duty. Let me re-read to you the first two paragraphs of Count 1.

Commencing at a time prior to September 1970, the exact date being unknown to the Grand Jury, and continuing thereafter through at least April 1972, within the Eastern District of New York, the defendant Stephen Rosenbaum and Douglas Holmberg, Andrew Hahn, Leon Ozer, Pauline Schlam, Ottrud Kapraki, Adolpho Farinella, Gus Farinella, Alan Orloff, Harold Kessler, Charles Assatly, Hugh McDonnell, and others, herein named as co-conspirators but not as defendants, conspired to defraud the Veterans Administration, an agency of the United States, in the operation of its loan guaranty

program, and conspired to commit offenses against the United States, namely, to pay and cause the payment of bribes and gratuities to officials of the Veterans Administration in violation of Title 18, United States Code, Section 201.

It was part of the conspiracy that the defendant Stephen Rosenbaum, for and on behalf of customers of Springfield Equities Ltd., did give and cause to be given bribes and gratuities in order to procure unlawful benefits on applications for mortgage insurance submitted to the Veterans Administration on properties located within the Eastern District of New York, among which unlawful benefits were included the procurement of excessive, inflated and false values of real property, the expedited processing of papers and documents submitted to the Veterans Administration, the approval of credit applications containing false, misleading or omitted material facts, and improper assignment, processing and review of applications for mortgage insurance.

Section 371, as I read it to you, requires that there also be committed an overt act to effect the object of the conspiracy, that is, the doing of something which moves the conspiracy towards the attainment

of its goal. As I said to you, the proof on a conspiracy count is not complete without proof of one or more of the alleged overt acts and proof that it was committed either by the defendant charged with the conspiracy or by one of the other members of the conspiratorial group. There are eight overt acts alleged in Count 1 and I will read them to you in a moment. But I must caution you that proof of the overt acts is not proof of the conspiracy, although inevitably the overt acts themselves may furnish some of the evidence bearing on the proof of the conspiracy and the identity of the conspiracy.

Bear in mind also that your concern here is to determine whether the conspiracy alleged in Count 1 has been proved. Remember that it is not proved if what the Government does prove is not that single conspiracy but two or more distinct conspiracies, although having one or more members in common. Now, let me re-read to you the overt acts of Count 1.

(1) "In or about March 1971, the defendant Stephen Rosenbaum met with the co-conspirator Douglas Holmberg and discussed the assignment of appraisers.

(2) In or about August 1971, the co-conspirator Andrew Hahn met with the defendant Stephen Rosenbaum

concerning the payment of money to the co-conspirator Hugh McDonnell.

(3) In or about January 1972, the defendant Stephen Rosenbaum had a telephone conversation with the co-conspirator Harold Kessler concerning the appraisals of certain properties on which applications for mortgage insurance would be and were submitted to the Veterans Administration.

(4) In or about January 1972, the defendant Stephen Rosenbaum met with the co-conspirator Ortrud Kapraki concerning her business relationship with Springfield Equities, Ltd.

(5) On or about February 25, 1972, the co-conspirator Andrew Hahn delivered a sum of money to the co-conspirator Charles Assatly.

(6) On March 2, 1972, the defendant Stephen Rosenbaum and the co-conspirator Leon Ozer met with Samuel Berman and discussed unlawful activities in connection with the procurement of mortgage insurance from the Veterans Administration.

(7) On or about March 14, 1972, the co-conspirator Pauline Schlam had a telephone conversation with Samuel Berman concerning the assignment of the co-conspirator Alan Orloff to appraise a property on

which an application for mortgage insurance would be submitted to the Veterans Administration.

(8) On March 23, 1972, the defendant Stephen Rosenbaum met with Thomas F. Jones concerning the submission of a mortgagor's credit application to the Veterans Administration. (Title 18, United States Code, Section 371).

A word of caution: There have been frequent references to other companies and their representatives, to Eastern, to United, to InterIsland, and to others. You must not infer merely from evidence that other companies were engaged in illicit activities similar to those charged against defendant that Springfield must have been engaged in those activities, and that defendant must have been guiltily involved in them.

The essential elements of Count 1 of the indictment all of which the Government must prove beyond a reasonable doubt or else you must acquit defendant of Count 1 are the following:

First, that the defendant conspired with Holmberg, Hahn, Ozer, Schlamm, Kapraki, the Farinellas, Orloff, Kessler, Assatlee and McDonnell to defraud the VA in the operation of its mortgage insurance program, or conspired for and on behalf of Springfield

Equities' customers to give and cause to be given to VA personnel gratuities and bribes intended to procure unlawful benefits on mortgage insurance applications to the VA, including submitting false valuations of the property to be mortgaged, unduly expediting the processing of applications to the VA, procuring the approval of falsified credit applications, and procuring improper assignments of appraisers and improper processing and reviewing of mortgage insurance applications to the VA; and

Second, that either the defendant or one of the other persons named as conspirators in the indictment committed one or more of the overt acts alleged in the indictment.

If the Government establishes beyond a reasonable doubt both of these essential elements of Count 1 of the indictment you will convict defendant on Count 1. If, however, the Government fails to prove either or both of these essential elements of Count 1 of the indictment beyond a reasonable doubt,, then you must acquit the defendant of Count 1.

The evidence in this case has necessarily been somewhat discursive since some of the witnesses testified with respect to several topics that are

involved in the case. In looking at Count 1 it may help you to observe that the order of the names in the indictment is helpful. The first group of names, Rosenbaum, Holmberg, Hahn, Ozer and Schlamm, are names of persons who were at some or all of the times in question employed at Springfield Equities, Ltd. The next group of names, Ortrud Kapraki and Adolfo and Gus Farinella are people who have been identified to you as speculators or broker-speculators. The next two names are names of outside "fee" appraisers who were assigned appraisals by the VA, Allen Orloff and Harold Kessler. The last two names in the group, Charles Assatlee and Hugh McDonnell were employees of the VA at some or all of the times in question. It is for you to determine from all of the evidence whether or not you are satisfied beyond a reasonable doubt that the defendant with some or all of the persons named in Count 1 conspired to do what is alleged in Count 1. Bear in mind that the Government is not required to prove precisely everything alleged in the description of the conspiracy and its membership but it must prove substantially the conspiracy alleged in the indictment and no other conspiracy. If you are satisfied that the conspiracy was formed, then each member of it is

responsible for all acts committed in furtherance of the conspiracy whether committed by himself or by others.

In determining whether or not there was a conspiracy, you consider all the evidence bearing on whether there was a conspiracy as alleged to defraud the United States and whether or not that evidence has established the conspiracy beyond a reasonable doubt. Similarly, using what has been said concerning the meaning of subdivisions (b) and (f), the bribery and gratuity subdivisions of Section 201, you consider the evidence to determine whether or not the Government has proved beyond a reasonable doubt that there was a conspiracy to commit the offenses of Section 201 substantially as alleged in Count 1.

Keep very much in mind that the crime of conspiracy is committed whether or not the conspiracy is successfully perpetrated. Remember that the law denounces conspiracy as being in and of itself an offense quite apart from the commission of particular crimes in successful completion of the plan of the conspiracy.

Proof beyond a reasonable doubt is not proof to an absolute certainty. Few things in life can be so proved. Proof beyond a reasonable doubt is such proof as you would be willing to rely and act upon in the most

important of your own affairs. If, after carefully weighing all the evidence you have an abiding conviction of the truth of the charge such that you feel conscientiously bound to act upon it, then you would be free from reasonable doubt. If, however, after weighing all the evidence, you have such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves, such a doubt would be a reasonable doubt.

That does not mean that each bit of the Government's evidence must be found by you to be true beyond a reasonable doubt. It means rather that in sum total the Government's evidence must satisfy you beyond a reasonable doubt as to each element of the crime charged, or you must acquit.

A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden of proof is always on the Government, defendant has the right to rely on the failure of the Government to prove any essential element of the charge. A defendant may rely too on evidence brought out on his cross-examination of witnesses called by the Government. The law does not impose on a defendant the burden or duty of producing any evidence.

Under our law a defendant has a constitutional right to remain silent. No inference unfavorable to the defendant can be drawn from that fact. Your deliberations accordingly must exclude consideration of or reference to the matter and must concern itself solely with the evidence before you.

A defendant is presumed to be innocent and that presumption accompanies him throughout the trial. It continues unless you are satisfied on all the evidence that the Government has proved defendant's guilt beyond a reasonable doubt.

I will not summarize the evidence.

You have heard twenty witnesses, to name them in the order in which they testified: Simon Ackerman, Albert J. Grace, Sanford Allinson, Donald Carroll, Rose Cohen, Martin Cohen, Bertha Rady, Hugh J. McDonnell, Charles Asatlee, Harold Kessler, Ortrud Kapraki, Adolph Farinella, Alonzo Smith, Nicasio Corsello, Douglas V. Holmberg, Pauline Schlam, Daniel F. Keleher, Irving Jablon, Samuel Berman, and Thomas F. Jones.

Eighty-eight exhibits have been received in evidence. I have said that you must decide the case on the evidence

The evidence is the testimony of these witnesses,

the exhibits received in evicence, and the facts that have been stipulated.

Statements and arguments of counsel and answers stricken from the record are not evidence.

The evidence includes, of course, what is brought out on cross-examination as well as what is testified under direct examination.

Your verdict must be based on the evidence. But in your consideration of the evidence you are not limited to the bare words of the witnesses and the bald facts that you find have been proved. The evidence includes the inferences reasonably to be drawn from the testimony which you hear and the facts which you find have been proved.

The failure of the Government to call a witness whom the evidence shows to be peculiarly available to it rather than to the defense and who, the evidence indicates, could give material and relevant testimony, that would not be merely cumulative of other testimony, warrants you in inferring teat the witness' testimony would not be favorable to the Government as the party having the burden of proof on the issues on which that witness could testify, provided that you are satisfied from the evidence that the witness, if called, would

testify. But no inference against either side flows from the mere fact that persons named in the evidence have not been called to testify.

There are two types of evidence from which you may lawfully find that a fact has been proven. One is direct evidence, such as the testimony of an eyewitness to his observations of the facts to be proved. The other is circumstantial evidence, the proof of facts and circumstances which rationally imply the existence or non-existence of some other fact because such other fact usually and reasonably follows according to the common experience of mankind. Thus, if you see people coming into a building shaking out dripping umbrellas, and others, about to go out of doors, turning back toward their offices, you infer from these circumstances that it is raining outside. Or, while you can see from your window that the sky is full of clouds and the streets are wet, you see also that passing cars are not using their windshield wipers and passersby are carrying their umbrellas folded under their arms; you infer from those circumstances that it is not raining.

As a general rule the law makes no distinction between direct and circumstantial evidence. If the evidence, as here, is in part indirect and circumstantial,

then you apply to it, along with all the other evidence, the same standard of proof: it must, taken with the other evidence, satisfy you of the defendant's guilt, beyond a reasonable doubt, or else you must acquit.

You are the sole judges of the credibility of the witnesses.

The motives and state of mind of each witness as they appear to you and the circumstances and inducements under which the witness testified are to be taken into account. Consider any relation each witness may bear to either side of the case and the manner in which the verdict might affect him.

You may consider the appearance and manner of each witness on the witness stand, the witness' apparent candor or lack of it, and the character of the testimony given, whether the testimony contains inconsistencies or discrepancies, whether it is intrinsically credible or seems to you in whole or part improbable, and whether it conflicts with other testimony or is consistent with other testimony in the case.

In weighing the effect of conflict or discrepancy consider whether it pertains to a matter of importance or to unimportant details and whether it seems to you

to result from innocent error or from falsehood. If you find a witness has been mistaken or untruthful, in all or in part of the testimony given, then you may give the testimony of that witness such credit, if any, as you think it deserves in the light of the nature and extent of the defects that you find in it.

Evidence that at an earlier time a witness made a statement inconsistent with or contradictory of that witness' testimony here in your presence justifies you in rejecting the testimony given before you on that point but does not require you to reject the testimony. You must decide in the light of the inconsistency and all the other factors bearing on the credibility of the testimony whether you do or do not accept it as true. You do not, however, take the earlier statement as establishing the facts; rather, you treat it as at most nullifying the testimony given in court.

If, however, a witness adopts as true a statement he made out of court at an earlier time, then you may treat that out-of-court statement as the witness' evidence.

If you conclude that a witness has knowingly testified falsely concerning any material matter, you have a right to distrust that witness' testimony in

other particulars. You may reject all the witness' testimony or give it or parts of it the credence you think it deserves.

In considering the credibility of a witness, you may take into account the fact that he has been previously convicted of a crime or crimes. You may also take into account evidence that a witness has admitted the commission of other acts that were in violation of the law.

You may conclude that the testimony of the witnesses Carroll, Rose Cohen, Rady, McDonnell, Assatly, Kessler, Kapraki, Farinella, Smith, Holmberg, and possibly Schlam, if accepted by you, would make the witness an accomplice in the commission of one or more crimes. An accomplice is one who joins another in the commission of a crime voluntarily and with common purpose. An accomplice does not become incompetent as a witness because of the witness' participation in the criminal acts charged. On the contrary, if the only evidence on some or all of the essential elements of any count is the testimony of an accomplice, it may still be of sufficient weight, if you believe it, to sustain a verdict of guilty without corroboration in or support of other evidence. Yet bear in mind that

accomplice testimony is to be received with caution and weighed with care. You should not convict on unsupported accomplice testimony unless you believe that testimony beyond a reasonable doubt.

I have sought not to comment on the evidence or to give any impression as to my own view, if I have one, of the relative weight of the evidence. If I have done so, however, you may disregard it entirely for you are the sole judges of the facts.

From time to time in the course of the trial, objections have been made and rulings on evidence given. Draw no inferences from the comparative frequency of objections of one or the other side or from the comparative record in having objections sustained. Where an objection to a question has been sustained, disregard the question and draw no inferences from its wording about the answer that might have been given. Where an objection is overruled, evidence then received has no special weight just because unsuccessfully objected to.

Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching agreement if you can do so without doing violence to

individual judgment. Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. Your task is one of conscience, and pride of opinion has no place in matters of conscience. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The form of your verdict, which must be given separately on each count, is simple. Your verdict must be either guilty or not guilty, it must be given separately for each count, and it must be a unanimous verdict on each count. Your verdict need not be the same on each count.

Your verdict on each count will be delivered orally here in open court by your foreman in response to questions which the Deputy Clerk of Court will address to him.

You are not partisans -- you are judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

When you have reached a verdict and are ready to report, simply advise the Marshal that you have reached a verdict without disclosing orally or in writing what your verdict is.

Your verdict must not be disclosed to anyone before you deliver it orally in the courtroom in response to the questions of the Clerk of the Court.

If you wish to communicate with the Court, do so in writing, using the Foreman, Juror No. 1, as your intermediary and representative. Notify the Marshal when you have any such communication. The Marshal will be seated out here in the courtroom so when you have a message for him you will have to open the soundproof door and knock on the courtroom door, and then he will open the door and take the message from you.

There will now be a short recess during which counsel will review the charge with me to make certain that nothing has been omitted or misspoken. Then you will retire to the jury room to deliberate your verdict.

When you return to the courtroom after this recess will you, Miss Genevive and Mr. Douglas and Mr. Bennett bring your hats and coats with you because at this point you will be excused from further attendance on the jury, assuming nothing happens in the

next few moments.

Please do not initiate your discussion of the case at this time since you see at the moment you will have three strangers to your deliberations with you.

(The jury left the courtroom.)

(continued next page)

MR. GOULD: Your Honor, on page 13, line 3, I think that should be Count Two, it says Three -- I see -- I was a little confused. I thought you were referring backwards. It is O.K.

The only other thing I have is at the bottom of 13 and top of 14 and not for a correction. But if it is reread, maybe you can change the language where it says, "Rose Cohen in connection with the assignment and processing of applications for FHA mortgage insurance."

Later on the charge does state assignment of appraisers and that might be a little confusing to them.

Page 13 and the top of page 14 talks about influencing her in assigning of applications and they might think that as expediting applications, whereas later on it does say in assigning appraisers.

THE COURT: I should have been a alert on that.

MR. GOULD: I thought I had said it at some other time, I guess I did not. I had noted before. I do not think it is important now, but if they ask to have it read back --

THE COURT: I have jotted it down on here.

MR. WASHOR: I have no corrections as to the reading of the charge. As to the context --

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THE COURT: I take it you renew as exceptions to the charge the rejected requests to charge and the exceptions which you voiced during our long discussion of the charge on Friday.

MR. WASHOR: Correct, your Honor, with one addition, if I may. In naming accomplices, as a matter of law I would ask that you incorporate McDonnell, Assatly, Leon Odzer and Kessler as accomplices, as a matter of law.

THE COURT: I think I did. I believe I put in everybody and the names I read, if I read them correctly, were the witnesses.

MR. WASHOR: If I am in error that each name was read, I withdraw the request.

THE COURT: I think I read the witnesses, the witnesses Carroll, Rose Cohen, Bertha Rady, McDonnell, Assatly, Kessler, Kapraki, Farinelli, Smith, Holmberg and possibly Schlam.

MR. WASHOR: There is not Leon Odzer.

THE COURT: Yes, I did that, it was just a mistake.

MR. WASHOR: I am not accusing the Court of deliberateness.

THE COURT: Should I remind them of that?

MR. WASHOR: Your Honor, it might be fairer to

just incorporate it when and if they should ask any instructions.

THE COURT: Very well, if you prefer.

MR. WASHOR: It is a double-edged sword.

THE COURT: I think there's a psychological reaction, the less said about Odzer the better.

MR. WASHOR: I prefer it at this point.

MR. GOULD: I have one other item. In the transcript on the Jablon testimony, if it is ever read back, there is a mistake in the transcript.

THE COURT: Do you have the page number?

MR. GOULD: 1396. I think I mentioned it yesterday briefly. It is where the question was asked: "Did Mr. Rosenbaum ever say anything to disavow what Mr. Odzer said?"

The answer was, "No," and it comes out "Yes" on the transcript.

THE COURT: Well, I couldn't swear to it but my recollection tells me he said "No."

MR. WASHOR: I have no dispute about that.

Your Honor, most respectfully I take exception to the charge involving conspiracy, the entire tenor of the conspiracy charge. I do not believe it is necessary at this point for me to delineate those direct objections as to the exception.

You see, I am very perturbed with the conspiracy, the law of conspiracy, the confusion that it imposes on lay people.

THE COURT: I suppose it is just as well to get objections to any and every, even the ideal conspiracy job, on the record against the day when some Court finally arises its wrath and says -- End.

MR. WASHOR: I hope it is soon, Judge.

THE COURT: As I indicated to you yesterday, I think that will only be in Mr. Gould's time, not mine and probably not yours. I presume Mr. Gould is your junior by six months.

MR. GOULD: And healthy.

MR. WASHOR: Thank you for your courtesy, your Honor.

(The jury took its place in the jury box.)

THE COURT: There will be no further charge. Members of the jury, as soon as the Marshals have been sworn they will take you into their custodial care until you reach a verdict. You will then be required to commence your deliberations and Miss Genovese, Mr. Douglas and Mr. Bennett, you will not remain with us.

(The Marshals were duly sworn.)

THE COURT. All right, members of the jury.

There are only two copies of the indictment here at the moment but there will be another ten in a moment or two.

(The jury left the courtroom.)

THE COURT: I want to thank you, Miss Genovese, Mr. Douglas and Mr. Bennett for keeping with us so patiently and so long. I think the only thing you know you did was that you kept the rest of the jury healthy, which is something. We are grateful to you for your patience and attentive listening to all the testimony in the case and you actually participated until the last moment. You can console yourself that you do not have the responsibility. If you want to find out, you can phone chambers to find out what happened and we can let you know.

In the meanwhile, if you need certificates of attendance or anything like that, you can tell them when you get back down to the Central Jury Room.

Thank you very much for your participation throughout this term of the court and Mr.Bennett, would you take the cards and take them downstairs.

Thank you

(The Alternate Jurors left the courtroom.)

THE COURT: Gentlemen is it agreeable with you if it becomes necessary, as it may, to swear additional

or relief Marshals, if the Deputy Clerk does that in your absence?

MR. WASHOR: Surely.

THE COURT: When the jury asks for exhibits, as long as we are entirely confident that they are exhibits, is it agreeable, that is not exhibits for Identification, is it agreeable if Mr. Walsh simply delivers them without having us come in to preside over that application? If anything questionable comes up, if they want a rereading of anything, including parts of the charge, we can get you in for that.

MR. WASHOR: So long as we are notified what exhibits they ask for.

THE COURT: The next time you come in you will be told. But people do not like to stay around here and sometimes they ask for exhibits one by one. There are only 88 of them, so it shouldn't be much of a problem getting them all straightened out.

MR. WASHOR: It is agreeable to us.

THE COURT: The last thing is messages and the practices that when a message comes out the Marshal shows it to me and if the message seems perfectly routine, one like, "Please, notify I will be late for dinner," et cetera, we authorize the Marshal to make the call. If it is in any way suspect, and I have not

had a suspect one yet, we will, of course, get in touch with you. The juror is not allowed to call, the Marshal handles that.

MR. WASHOR: Thank you, Judge.

(Continued on next page.)

(A recess was taken until five minutes after 12:00 p.m.)

THE COURT: I take it you do not favor delivering a copy of the charge to the jury. Let me tell you before you say no.

MR. WASHOR: I have no objection.

MR. GOULD: I have no objection.

MR. WASHOR: You see Judge, it reaches a point where we have got to be practical. The charge is as is. You read it verbatim.

THE COURT: I think I did. I think the only one change I would incorporate in that, that is in Count 1 where I omitted beyond a reasonable doubt I will put it in. May I interpolate that.

MR. GOULD: In addition, the two changes on the Rose Cohen and adding Leon Odzer.

THE COURT: By the way I was told by that lovely judge whose name I can never remember, it is practically the universal practice in Indiana and always has been and I think in the Indiana state practice it must be done.

Was that Page 13?

MR. GOULD: One was on Page 13 and one on 14. As to Rose Cohen, it should read assignment of appraisers rather than it appears once on 13 and once

on 14.

THE COURT: Instead of and processing of application it would say assignment of appraisers, simply.

We were wrong on that accomplices, they were not witnesses.

MR. WASHOR: Need he be a witness.

THE COURT: Because we were talking about credibility on that page.

THE COURT CLERK: Court Exhibit 1, note which reads: "Will we get a copy of Judge's final comments and charges relating to the case."

MR. GOULD: You are not going to bring them out?

THE COURT: No, we will just send it in.

They would like the transcript.

MR. GOULD: The entire transcript?

THE COURT: Can we get a copy of the witness' testimony? Let me read the whole message. "Can we get a copy of the witness' testimony.

"What are the three questions we must ask ourselves in order to determine a verdict on Count 2.

"Need to see evidence (all)."

MR. GOULD: All the evidence.

THE COURT: It says "all". That could be that

is what we all say or we would like to see all the evidence.

THE COURT CLERK: Marked Court Exhibit 2.

THE COURT: I have a feeling that we may have chosen a very bright jury. At least our impression just going in and out is that they seem to be a very bright group. It is a very long record.

The thing I would most worry about is whether there is extensive colloquy that would worry us.

MR. GOULD: There are all the side bars, your Honor.

THE COURT: This trial has been relatively free of side bars but not wholly.

MR. GOULD: No.

MR. WASHOR: There were a few occasions where we had a side bar, not too often though.

MR. GOULD: That would worry me.

THE COURT: There have been some killer dillers. I wonder if we could locate that.

MR. GOULD: It took me the entire weekend to get through that transcript for the summation.

THE COURT: You were going through it looking for context. We would be going through it to see if we could pick out the side bars and slide those pages out. We could do it pretty quickly if you were willing to

confront the idea.

MR. WASHOR: May I be heard, your Honor.

THE COURT: You absolutely can.

MR. WASHOR: With regard to the transcript, I would suppose they were talking about the tapes.

THE COURT: I do not think so. They are talking about the testimony.

MR. WASHOR: Insofar as the testimony, submitting a copy of the transcript, I think I have demonstrated my desire to eliminate confusion with the jury but we are now approaching a point where reading of a transcript in black and white is not the same as listening to the testimony. I would prefer the jury be cautioned or admonished or requested that if they want any one individual's testimony or any one portion of the individual's testimony, that it will be obtained for them and read to them in open Court. I would prefer that to giving them an entire trial record, so that they can sit inside the jury room and flip through pages which I think is just not the proper way to do it. For example there is direct, cross, redirect and recross and there are different elements and they may find one or two lines of import in the direct testimony or the cross-examination that is expounded upon in another portion of a person's testimony.

THE COURT: I think you are giving all the usual reasons.

MR. WASHOR: I would ask the Court not to give them the entire transcript of the trial.

MR. GOULD: My experience has been when the jury note comes in for a specific part of the testimony and they ask that they be read about so and so, it is very difficult for counsel to decide on when that is alluded to.

THE COURT: What risks do we run.

MR. GOULD: Do they have the right to see it? I definitely think side bars would worry me.

THE COURT: There is no problem on that. If each of us would go through it, there are four of us, go through the pages, we could locate them and pull those pages out and make xerox copies of the pages that have colloquy and take that part out and so we could take care of that. It would take a little time.

I think that the real question is whether it is wise to let them have it. I do not know, I would not have any reluctance myself. If you have been a judge for fourteen years your confidence in jurors rises steadily. That is not the experience of a lawyer for twenty-seven years. You are always mistrustful of jurors because obviously you are always

on one side so you have mixed reactions to jurors so that you are not exactly a disinterested observer. Indeed some of the jury verdicts are not totally unrelated to the fees.

I would not today hesitate to send the jury a transcript with the caution they must realize that something that is said at one point may be unsaid at another or material modified by what is brought out in cross and redirect and recross and they must take note of what they heard in the Courtroom and the demeanor of witnesses and all the rest of it. Even then I would not do it without the consent of counsel on both sides.

I would like to see consent to it but I will not urge you to because I do not expect you to share my confidence in jurors. I think it is a shared confidence by the judges in this Court. If you would want to get a rule adopted abolishing jurors, you would not get it, not in this Court. You might get one permitting eleven from twelve as far as a verdict because we are all aware of the risk of the screwball juror destroying a month's work of everyone by just one not being with the case, that is always a risk. At the same time, you do not like to do that because you always have the feeling that if unanimity is not

required, it encourages incomplete consideration and would cause the jurors to disregard the hangout fellow and not listen to him, in spite of the movie.

MR. GOULD: It always seems to come out on a rerun right about just before one of my trials. I was very glad to see it was not shown this week.

MR. WASHOR: Your Honor, suppose I live up to the expectations of not sharing in your confidence and note my preference.

As far as the other portion of their question relative to the three questions or elements pertinent to Count 2 I suppose it would be unnecessary to reiterate it orally once we gave them the charge.

THE COURT: I will direct them to the essential elements page.

MR. WASHOR: I think there are several pages.

THE COURT: There is one essential element page. For each charge there is an essential element page.

MR. WASHOR: I think you do take the liberty of explaining the elements.

THE COURT: Oh heavens, yes.

MR. WASHOR: I am not sure that is not part of their question.

THE COURT: Oh no, I think that is in a way,

yes. Count 2, is that what they asked? That is Page 7 and preceded and followed by explanatory material and then I think Count 3 there was a similar page, preceded and followed by explanatory material.

MR. WASHOR: What do we do about all the evidence.

THE COURT: I will tell them no. I think they mean exhibits.

MR. WASHOR: I think we might ask.

THE COURT: I will. Bring in the jury.

(The jury took its place in the jury box.)

(Continued next page.)

,ffe 4am

THE COURT: We have your message with three things in it.

Dealing with the second of your questions, what are the three questions we must ask ourselves in order to determine the verdict on Count 2, that is on page 7 of the charge.

MEMBER OF JURY: We found it.

THE COURT: Then there is a similar one for Count 3. But each is followed and to some extent preceded by other explanatory material so that a page like page 7 is not too meaningful unless you keep the full explanation in mind.

The third one, the evidence, all, I take it you mean the 88 exhibits.

THE JURY FOREMAN: Yes.

THE COURT: That modest pile there is what it consists of. The only things that will not be delivered to you will be the tapes and that would be equivalent to shooting Mr. Keile right through the heart because they might break and if you need to hear the tapes then you will come back and you can hear them.

Can we get a copy of the witness's testimony? The answer to that is that it is very much against custom in this part of the country for a number of reasons. First, there is only one copy of it and it

does, in addition to the testimony, contains scattered throughout everything that went on in your absence including those things that went on in your presence but at the side bar so that it would take a long while -- we would have to process that to get at all those parts because they are not part of the evidentiary record.

But beyond that the reason for being reluctant to do that is because ordinarily the interest of the jurors is in some particular testimony rather than in all areas and counsel prefer to have these questions of what testimony the jurors are interested in hearing again or read to them brought to their attention in open court so that if there is some palpable error in the record which exhibits itself or something of that sort, something can be done about it. Sometimes requests of that kind give the parties an opportunity to see that perhaps in the light of those request further instructions might be appropriate as to how that particular area of testimony should be handled and related to other parts of the testimony.

So with reluctance we all feel that we have to bow to tradition which tells us that we had better bow to it until we find a better way of doing these things, which we have not to date, and we do not like to keep

anything from you that you really want. Feel perfectly free to ask to have read any testimony since all of the testimony has been transcribed and you may have read to you any parts of the records which you feel you have got to get clear on in order to move your deliberations forward.

I always apologize for my handwriting. My only excuse is that I learned it over 50 years ago and I am rusty.

(The jury left the courtroom.)

MR. GOULD: I want to make sure nothing will be in here that should not be in here.

MR. WALSH: Okay Mr. Washor, we are sending it in now.

MR. WASHOR: Yes.

(Whereupon the Court was recessed at 1:00 o'clock P.M.)

(The following occurred at 2:35 o'clock p.m.)

(The jury took its place in the jury box.)

fk/ss

THE COURT: The material on counsel table of course has nothing whatsoever to do with our present case. That is the next case.

lpw 4/13

We have your note that you would like to hear Holmberg and Rose Cohen's testimony. They testified in the other order. You want to hear Holmberg first? I take it that you do.

THE COURT CLERK: Note marked Court Exhibit 3.

(So marked.)

THE COURT: Mr. Holmberg testified on April 6th after being sworn on direct examination by Mr. Gould.

(The Court read the testimony of Mr. Holmberg.)

MR. WASHOR: May we have a short recess.

THE COURT: We will have a very short recess. Please do not discuss the case, members of the jury, until it is given to you to decide.

(A short recess was taken.)

(The jury took its place in the jury box.)

THE COURT: Rose Cohen testified on March 31st and this is the direct examination by Mr. Gould after she was sworn.

(The direct testimony was read by the Court.)

MR. WASHOR: Can we find out if that is what the

jury wants and whether they want to listen to the cross.

THE COURT: Do you want to listen to the cross-examination?

JUROR NUMBER 2: Yes your Honor.

THE COURT: I will continue reading.

(The Court continued reading the testimony of Rose Cohen.)

THE COURT: That was the end of Rose Cohen's testimony. Do you want to go home now or in five minutes?

As I told you yesterday, we do not keep jurors any longer but I think it is important to you to understand how unusual it is that today jurors are allowed to separate during their deliberations and return to their homes. Anciently and for hundreds of years once a jury was sworn in a case it was never allowed to separate until it rendered a verdict. That had many undesirable features, most important being that it tended to introduce an intrinsic pressure on jurors to reach a verdict just to get out of the jurat bind and not because they were ready with a decision. In recent times it has seemed more sensible not to try the patience of jurors but to proceed on a regular business hours basis until in calm deliberation

a verdict could be arrived at. So we now allow jurors to separate and return home.

But it is imperative that you under no circumstances discuss the case with anyone outside of the jury. You are the only people in the world who have any competence to decide this case. Only you have heard the evidence and only the evidence, not rumor, not junk, only sworn testimony and exhibits received in evidence so that you have to sift it and sort the evidence and only you have it. Only you are under the jurors' oath to decide this case and only you have the advantage of having seen the witnesses and now have the advantage of deliberating together with people whose knowledge is identical with yours and whose opportunity to observe is identical with each of yours. So you see, nobody else could possibly say anything to you that would not be a foolish and unwise intrusion on your informed state of mind.

It is above all important that you do not turn at this time to your spouses or whoever else are your trusted advisors because this is one time they could not possibly be of any assistance and could materially damage the interests of justice. When you go home the administration of justice is in your trust and you must not break that trust. So please again, do not

discuss the case with anyone not on the jury.

When you are on your way home, if you go home together, do not talk about it until you are all together and have a free exchange for one simple reason. Just as sure as two or three of you are talking out of the presence of the others something will be said which it is important that the other nine jurors hear and just because it has been said in a little group may never be repeated and it could influence the judgment of those three without having been in the possession of other jurors whose judgment it might also influence. So, please do not resume your deliberations until you are all together back in the jury room tomorrow morning.

Good night, we will see you tomorrow at 10:00 o'clock.

MR. WASHOR: Your Honor, the charge and indictment, it is unusual they may have those objects.

THE COURT: Everything stays here.

Return at 10:00 o'clock tomorrow and just come up, you do not have to check in downstairs.

THE COURT CLERK: How about the exhibits? I could put them in the closet so we do not have a clean up problem.

THE COURT: I think that is probably best.

(Whereupon, at 5:35 o'clock p.m. the Court was adjourned until 10:00 o'clock a.m. the following day.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

75-CR-856

-against- :

STEPHEN ROSENBAUM, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

April 14, 1976

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

FRANCES KARR
ACTING OFFICIAL COURT REPORTER

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Assistant U.S. Attorneys

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Attorney for Defendant

(12:05 p.m.)

THE CLERK: Jury note marked Court Exhibit 4.

THE COURT: Are we advised?

MR. WASHOR: Well, I am still confused.

THE COURT: It is perfectly plain. On the essential elements page I usually say the defendant conspired with or some of them. I did not this time and they picked me up on it. But I think they are right. There is a clear-cut semantic contradiction.

MR. WASHOR: The only problem is that on page 37 you are really talking about --

THE COURT: Page 36 is the big thing. There is page 36 and page 37, however.

If you look at the sentence starting -- if you would look at it, the sentence they put in the parenthesis.

MR. GOULD: Your Honor, in fact, that is precisely why the defendant really in a way gets the benefit. Had he been charged with a separate conspiracy and they believed six of the witnesses and not two, he would have six convictions.

THE COURT: No, I think it is a question of where a lot of people are charged as conspirators and if the proof goes only to show that seven out of ten were in on it, I think the question is whether

it is a material variation or not. I believe in a conspiracy case the answer is plainly no because sometimes you miss on three of them and sometimes you do not have any that brings them into it.

But what the jury has to be satisfied is that it is the conspiracy described in the indictment. That is more important than the omission of people would be if there was evidence of a conspiracy, but with different people, so that the jury would be in a position of having to say, well, without some explanation of proving different people, it is a different conspiracy. They indicted the fellow for the wrong thing, it is two other guys, not this. I think that is what the thinking is here, whether you have to prove the conspiracy as to some rule.

Let us look at the names involved. They may feel, for example, that Mrs. Schlam really was not involved at all. That she was just a person who innocently delivered messages, monies, et cetera, without being in on the alleged scheme, if any there was, things of that sort.

Does that mean the whole indictment goes out? And I believe the answer is no and I think that one small test of that is that it is customary to put in and others to the Grand Jury known and unknown, more

usually others to the Grand Jury unknown.

I think I have seen it once or twice known and unknown.

MR. GOULD: We said and others. I do not know whether I said known or unknown.

THE COURT: You did not say anything about it. I think that is where the Government has reason to believe there are others but they do not intend to try to prove it. If the names come up casually, so what, this is not the whole catalog of all the conspirators.

If that is a valid approach and for a lot of reasons you have to conclude that it is, then you can see again why the big question is if you prove the conspiracy alleged, described in the counts --

MR. GOULD: Substantially.

THE COURT: Substantially that conspiracy, that identifiable conspiracy, not having proved that each person charged with being a member in it has been shown to have been a member in it, beyond a reasonable doubt.

MR. WASHOR: Except, your Honor, while I cannot take issue with that dissertation in law, in candor they do reflect in the note some sort of concern about page 37 also. Page 37 talks about descriptively

whether or not there is an identifying conspiracy in Count One. I think the Court ought to comment about page 37 even if it is just repetition of the same language because they seem to go from 34 to 36 to 37.

THE COURT: You see, it is substantially the conspiracy alleged in the indictment and no other conspiracy. They want to know, the indictment alleges all the names -- I think it is the same question. But we can find out from them.

MR. WASHOR: Would you make inquiry in that area because I think that they may also well be confused about that concept.

MR. GOULD: As long as your Honor makes clear that no question, it has to be substantially the same conspiracy, although I think it is stated in there the Government does not have to prove each and every little thing that described the conspiracy.

MR. WASHOR: But if there is demonstrated to them as you have indicated on page 37 separate conspirators, using even the same facilities, Springfield Equities, they must acquit under Count One.

THE COURT: No, that is not in there.

MR. GOULD: That is not accurate. The question is, even if there is a variance whether there was

prejudice, whether Mr. Rosenbaum was convicted for conspiracy he had nothing to do with.

THE COURT: All right. At this point, gentlemen, it is on my head to bear it.

(The jury took its place in the jury box.)

THE COURT: We have your question, members of the jury and suppose I give you back the charge because you have marked the passages in it and I hope I can remember but I think I will be able to.

You say, "We find conflicting statements on page 34 through 37 of the Judge's notes. Please refer to penciled notations."

On 34 it states that the Government must, you say we, but the Government must prove that the defendant conspired with all.

On page 36 and '7 it states some or all of the persons named.

You are exactly right as to the contrarious of expression.

The paragraph marked first on page 34 is right from the first paragraph of the indictment, except I think I left out, "and others," after the name McDonnell. It differs only in that.

That I think is controlled by what is said at page 36 by the sentence that you have in parenthesis.

But the whole idea is controlled by the insistence 2122
that the conspiracy proved must be substantially the conspiracy alleged in Count One. That is where you look for the description of the conspiracy and the conspiracy that must be proved is that conspiracy and, of course, that Mr. Rosenbaum must be shown beyond a reasonable doubt joined in the formation of the conspiracy or joined the conspiracy after its formation and that an overt act was committed, one or more overt acts, was committed in furtherance of it, being one or more of the acts alleged in the indictment.

So that the question of whether there has to be a demonstration beyond a reasonable doubt that each one of the persons named in Count One was a member of the conspiracy, the answer is no. But it must not go to the point where you must feel or do feel that, well, now the proofs do not establish substantially the conspiracy that is alleged in the indictment because so many of the people there was no proof as to, so it becomes a question of identification of the conspiracy, if you want to put it that way. The conspiracy that must be proved is substantially that alleged in the indictment.

And then the language on page 36, the explana-

tion in substance that failure to prove it as to one or more of the persons named always excluding, of course, Mr. Rosenbaum, is not in and of itself fatal to the proof, being the proof of substantially the conspiracy alleged in the indictment.

Does that make sense to you now?

(The jury indicated yes.)

THE COURT: Do you want to say anything further, gentlemen?

Very well. Let me congratulate you people, you can really read. If we had more people like you around, Judges would be a little more careful.

(The jury left the courtroom.)

(A recess was taken until five minutes after 2 p.m.)

THE CLERK: Court Exhibit No. 5, "We have reached a verdict."

THE COURT: We have a message from the jury simply, "We have reached a verdict."

(The jury took its place in the jury box.)

THE COURT: We have your message that you have reached a verdict. Mr. Walsh?

THE CLERK: Madam Foreman, ladies and gentlemen of the jury, how do you find the defendant as to Count One, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: How do you find the defendant as to Count Two, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: How do you find the defendant as to Count Three, guilty or not guilty?

THE FORELADY: Not guilty.

THE CLERK: How do you find the defendant as to Count Four, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: You say you find the defendant guilty of Count One, Count Two, not guilty as to Count Three and guilty of Count Four and so say you all?

(The jury indicated by saying Yes.)

THE COURT: Would you poll the jury.

THE CLERK: Madam Forelady and ladies and gentlemen of the jury, you have heard your verdict as the Court has received it, finding the defendant guilty as to Count One, guilty as to Count Two, not guilty as to Count Three and guilty as to Count Four.

Madam Forelady, is that your verdict?

THE FORELADY: Yes.

THE CLERK: Second juror, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Third juror, is that your verdict?

JUROR NO. 3: Yes.

THE CLERK: Fourth juror, is that your verdict?

JUROR NO. 4: Yes.

THE CLERK: Fifth juror, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Sixth juror, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Seventh juror, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Eighth juror, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Ninth juror, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Tenth juror, is that your verdict?

JUROR NO. 10: Yes.

THE CLERK: Eleventh juror, is that your verdict?

JUROR NO. 11: Yes.

THE CLERK: Twelfth juror, is that your verdict?

JUROR NO. 12: Yes.

THE CLERK: And so say you all.

THE COURT: That completes your service as jurors in this case, members of the jury, and this term of court. On behalf of the judges of the court and counsel, I want to thank you for your participation.

I know it takes you away from your work and causes you a good deal of inconvenience but I think of all of us who work in the law are very and ever conscious that the jury system is the key stone of the entire arch of justice and those of us who know the court best can assure you that we will never come out for abolition of the jury system. That goes as well for those who lose jury cases as those who win them. We have confidence in the jury system as the instrument of justice par excellence. We look to you to give justice that finality of tone which is imperative.

I should say to you that we have worked within the jury system for centuries and as you know better than anyone else, it wastes a lot of time, your time, and if any of you have any suggestions about how we can improve the use of jurors, do not hesitate to send them in. They may well be things we have considered many times, tried out and cannot use, for one or another reason because the very nature of the jury system and its random selection, seating jurors who are totally disinterested, does mean we waste an awful lot of time from your point of view in screening jurors to get the jurors whom the parties and the Court feels are competent to decide a particular case. But we are conscious, like all people who work

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closely with any system, that sometimes people coming in from the outside with a fresh point of view see things we have been missing. So do not hesitate to write in if you have concrete suggestions and we will be grateful for them. Do not be surprised if they are not instituted within a couple of months because it is all too likely they will be things that have been suggested and tried before and failed.

For example, one you raised with us about what happens if someone falls ill during deliberations. That is something that everyone is scratching his head over now, how do we get around a Court of Appeals decision as to a better way of doing that. That is the kind of thing I mean.

Again, thank you and if any of you need certificates, I think if you go to the Central Jury Room it will be issued to you right away.

Thank you very much.

(The jury left the courtroom.)

(Continued on next page.)

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MR. WASHOR: Your Honor, may we reserve all 2128 motions so that we have an opportunity to digest some of the legal concepts.

THE COURT: Yes. What do you mean until sentence day or what?

MR. WASHOR: I suppose we will have four or six weeks before sentence is imposed. I know there is a statuatory discretion.

THE COURT: Actually we have to do it right away, it is a very short time and we have to deal with that immediately.

MR. GOULD: After that the Government would like, since we have the issue of prosecutorial delay that may come up again, I would like to make an offer of proof as to which witnesses testified at trial were available at what times to the Government, just to get it on the record, should it come up.

THE COURT: That refers to your pre-trial motion.

MR. GOULD: Which I assume is going to be renewed now and on appeal.

MR. WASHOR: There are other legal concepts. I would like time to digest them.

MR. GOULD: I just wanted to put it on the record. Sanford Allinson was available from 1972.

Donald Carroll was cooperating in September 1972. Rose Cohen September 1972. Bertha Rady the middle of 1973. Hugh McDonnell first became available when given immunity and forced to testify November 1974. Charles Assatly became available August 1975. Harold Kessler became available, I am not sure of the exact date, sometime in 1973. The same for Artrud Kapraki. Sunny Farinelli became available September 1975. Alonzo Smith pled guilty and then became available I believe it was 1975, I do not know the exact month. Nicasio Corsello was available from 1972 onward. Douglas Holmberg was available the summer of 1975. Pauline Schlam the summer of 1975. Jablon and Berman from the time the tapes were made which was June of 1972 or whatever that was. And the experts, those particular ones were not available now but we could have secured other experts at any time.

MR. WASHOR: Your Honor, could we pick a date for sentence?

THE COURT: Well, no, because that is six to eight weeks and depends on how early the pre-sentence report can be ready and it is not a question of difficulty of investigation, I know there will not be any in Mr. Rosenbaum's case, but the processing of it. So I would suggest that the motions be, whatever

motions you have in mind, be submitted at least in the form of the grounds of the motion if not whatever evidentiary and/or legal support you have for the grounds of the motion, be submitted in writing within a month and then I would suggest that as long as they are presented orally at a convenient date at or before sentencing that would serve every purpose of the occasion. That will be a month from today, May 14.

MR. WASHOR: That is a Friday.

THE COURT: May 14.

MR. GOULD: Continued on O.R. on this.

THE COURT: Yes.

MR. WASHOR: Last but not least there are some preliminary proceedings, fingerp inting and what not but this is the eve of a holiday for the defendant in spite of the verdict. May we request that he has quite solid roots in the community and ask for a postponement before coming into the probation department. Perhaps we can put it over to Monday and I will make the necessary arrangements to have him here.

MR. GOULD: I have no problem with that but probation should be talked to about that.

PROBATION OFFICER: We usually like to get the ball rolling as quickly as possible. Verification must be sent out to various places. We do not want to

infringe upon a perso[illegible]religiousness.

MR. WASHOR: [illegible] are not looking for delay.

THE COURT: Why don't you arrange it with them.

MR. WASHOR: We accuse the Government of pre-trial delay but we are not looking for delay but rather to accommodate an emotional and religious conflict and if we can have permission of the Court we will be here bright and early Monday morning.

Thank you, sir.

MR. GOULD: Thank you, Judge.

THE COURT: Thank you gentlemen for a long and difficult trial. I must say I thought it was conducted with exemplary style on both sides and with great ability.

Thank you, gentlemen.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

STEVEN ROSENBAUM,

Defendant

76 CR 956

United States Courthouse
Brooklyn, New York

May 24, 1976
4:30 o'clock P.M.

B e f o r e:

HON. JOHN F. DOOLING, U.S.D.J.

RAY STALKER

ACTING OFFICIAL COURT REPORTER

APPEARANCES:

DAVID G. TRAGER, ESQ.
United States Attorney for the
Eastern District of New York

BY: DAVID GOULD, ESQ.
Assistant U. S. Attorney

MICHAEL WASHOR, ESQ.
-and-
ARNOLD WALLACH, ESQ.
Attorneys for defendant

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THE CLERK: United States of American against Stephen Rosenbaum.

MR. WASHOR: Good afternoon, your HOnor.

THE COURT: Good afternoon.

MR. WASHOR: May I just clarify for the record the motions and the memorandum that have been submitted bear my name. I suppose it is accurate. I do represent Mr. Rosenbaum, but Mr. Wallach, Arnold Wallach, is the attorney that prepared the papers. His name is not on there. I just wanted the Court to realize that.

THE COURT: There is no misrepresentation intended.

MR. WASHOR: I see if we were successful of the motions I would take the credit. And being most serious now.

THE COURT: I understand.

MR. WASHOR: Mr. Wallach is before the Court for any argument that may be necessary as you desire at this time.

MR. WALLACH: Mr. Washor discussed this and I formulated it and of course the young lady who does the typing left my name out. She probably figured I was drawing my death warrant and put his name. I will accept any responsibility, Judge.

MR. GOULD: You are not charged with the crime, it is a motion.

MR. WALLACH: These days I do not know anymore.

THE COURT: Is there anything to add to what is said?

MR. WALLACH: Not really, not really.

THE COURT: The thing to do is to hear Mr. Gould then.

MR. WALLACH: Can we sit down while he does that?

THE COURT: Yes.

MR. GOULD: Yes, your HOnor. I just have a few comments on the motions.

First of all, as to the motion that is directed towards the -- talking about the misdemeanor, 209, first of all, the statement in paragraph number 4 of the affidavit is while the jury was deliberating the defendant asked the Court to charge a lesser included offense.

It states that this colloquy was off the record. I would also like to put on the record this colloquy was undertaken while I was not even here. This is the first I heard of this colloquy, when I read the affidavit and I believe I got Mr. Gutman and I was told the colloquy took place while Mr.

Washor was sitting there and I was in my office. I never heard of it.

In any event, even assuming the colloquy had been on the record and I had been here --

THE COURT: You mean it would not have been off the record, of course. If there had been understood to be a request to charge. But I understood it to be that Mr. Washor had a thought about Section 209 and presented it to me with the idea that if it seemed to be a lesser included offense, perhaps then it would be appropriate to charge it.

But there was no formal request. Now, I looked at it and I said I thought it was addressed to quite a different sort of situation. It was not a lesser included offense and I think I indicated that I thought it would be a pure abstraction as applied to the facts in our case.

I venture the idea that it probably had to do with paying a dollar a year man, other people who were lent by industry to the overnment.

The situation in which someone who was with a great company of some sort and went on salary with the government. He then definitely had to have his regular salary stopped, if he is paid. That is what I thought it was addressed to. State employees who

on Federal payroll, I don't know whether we noticed that part of it at the time or not.

MR. GOULD: I would like to add, your Honor, that the cases --

THE COURT: When we tried to look it up, I don't know whether we went back to the other situation, was there any legislative history, I don't think we can find any at all.

MR. WASHOR: There was some.

THE COURT: Very inconclusive at that point.

MR. GOULD: In addition, your Honor, the cases that are cited by the defendant, assuming this was a proper request made with everybody present, there are cases of course as the defendant cited, where a jury has gone out and a judge gives an additional charge to the jury, but that was a case that was clarified and the jury came in with a question and asked to have something. Then it is agreed by both sides to clarify.

I could not find one case after the jury goes out on another judge's charge and he includes a lesser offense --

THE COURT: I don't know, but I would assume that if a clearcut case came up of it, for example, supposing after a charge is given, the judge goes

back to chambers and picks up the law weekly, with a decision of the Supreme Court saying that G is a lesser included offense under S. Is that the way it goes?

Well, in our selection, whatever --

MR. GOULD: Would be F under B.

THE COURT: And realizes he is not charged that, he may very well reconvene. He says here the Supreme Court just said that we ought to point this out to the jury. At that point I suppose the earliest moment at which it could be done it might be done. But we weren't faced with anything like that.

MR. GOULD: The next thing, your Honor, there is --

THE COURT: I don't think it is a lesser included offense myself.

MR. GOULD: I would have argued against it, but my point is I don't think it was formally made and certainly the reason it is off the record, I just want to clarify it from the papers --

THE COURT: It has been on the books since 1948. No reasoning of the case interpreted meaningfully. I don't think it would have helped matters had it been adverted to earlier. I can't conceive of myself having charged it. I still would not charge it.

So, nothing has been lost by the failure to request it earlier, because you would not have thought of it as a lesser included offense because if it was given to the jury, the alternative was an acquittal and the jury knew how to acquit.

They did on the 1-B. They know how to say you have improved it.

We were very careful to point out to them it was not enough to show it was [illegible] amount of money that was passed out, but it had to be shown it was passed in contemplation of services rendered in the past and to be rendered not as pay, not to influence, but in contemplation of it.

Now, the jury thought that it was just great heartedness, it would have acquitted him. But remember there was testimony, questions and answers where these bonifications extended to everybody and the answer was no. Just to people who were in the field, working in the field, that we would normally have contact with.

MR. GOULD: Your Honor, in point number 12 of the affirmation, which says furthermore, since the substantive count, defendant was convicted under required concerted action, defendant could not be convicted of conspiracy.

That number 12 is referring to the point in the memorandum of law about later on, about Mr. Wartendrull. To begin with, your Honor, my understanding is that it is fairly much a dead letter. But to the extent it's alive, the way I understand it, it means if a bribe takes two people to commit, you cannot --

THE COURT: It is an offense which one cannot commit alone himself.

MR. GOULD: Then you can't charge conspiracy. However, if one or more than the necessary minimum number of people are involved in the conspiracy, as happened in our case -- in other words, if we had charged the conspiracy to bribe on count 1, with only two people involved, then in that circumstance Watrendrull, to the extent it's still alive, and I have a question about that, might apply.

But, in this case it was a wide conspiracy and under the theory the defendant would lay out. there could be no such conspiracy and a conspiracy to bribe. That is certainly not the case.

THE COURT: I think Mr. Justice Powel talked about Wartendrull.

MR. GOULD: There was a recent decision.

MR. WALLACH: That is what I cited, Ianelli.

THE COURT: Ianelli, page 11.

MR. WALLACH: 1955 at 371. He mentions it's a question about whether if a group of people decided to bribe, whether that comes within the coverage of the Rule. I don't know what the United States Attorney is going for. He is going to cite the Second Circuit decision that came before Ianelli, United States of America against Becker where they held that 1955, the gambling statute or the gambling business statute requiring five or more can co-exist with 371, because in the case of 371, it takes two or more to make a conspiracy.

But in the case of 1955, it takes a minimum of five.

That is the reasoning that I think the United States Attorney is using this and that is the reasoning --

THE COURT: I think I will take it from Mr. Gould.

MR. WALLACH: I cited the case that I didn't argue. I cited the Ianelli.

MR. GOULD: Your Honor, what I was arguing, I'm not aware of any case whereby Wartendrull has defeated an indictment which involved more than the minimum number of people needed to commit the act.

THE COURT: Well, I would say that Wartendrull does not apply where there is a conspiracy to commit the crime. Not just the commission of the crime, but those necessary to effect its commission.

If a crime is committed by those necessary to effect its commission, I think it doesn't matter. It is simply a matter of interpreting what the legislature had in mind. I think it is unlikely that they also meant it to be a conspiracy. They would have said so. But, then they would have thought to say it to make their meaning clear. If a bribe is given or if a briber or a bribee conspire to give a bribe, they should both be guilty or one or the other should be guilty, because sometimes there are conspiracies which do not come to pass.

In other words, where a conspiracy is used, it is a situation of saying attempt rather than conspire. In that sense I suppose you could have failed to prove the conspiracy to bribe where everything has been set up, except at that point an arrest occurs. Something of that sort.

But, I don't think that is the area we are in, because as I remember our counts, I can put it this way, it is a horizontal conspiracy among the people on the giving side to influence conduct or extend

gratuities to those on the receiving side.

That would be a conspiracy in any man's book. In other words, if Smith and Jones is a partnership building buildings, and they need a certificate of some sort from FHA, if he died, Smith or Jones could go to FHA without his partner's knowing it. There hasn't been any conspiracy to bribe in this sense. But, if Smith and Jones go together and say we have to get this piece of business, how do we go about it, they decide there is only one way we can get it. You have to get a certificate. You cannot honestly get it.

Let's go to the clerk, Mr. Harris, the little who sits at the desk where they stamp up the certificates. I say, "Okay, how will we do it?" Then they agree they will get cash, you just drop it on his desk with all the letters on it and drop it in there and say about $500 in an envelope, put it in his desk draw. Doesn't that certificate look a lot more plausible to you now?

Now, you've got a conspiracy to bribe. You see what I mean?

We are talking about -- that I think, that's very much an exaggeration in formula, but it's something like that that we are dealing with here, at

least in the Government's claim. That's what they claim to have proved, I take it.

Now, the other point I think is whether or not there was a built in duality in the conspiracy claimed to the extent there is a conspiracy to violate 201F.

MR. GOULD: That goes into their next point, also, which is their claim and I imagine they would extend their Wartendrull argument, because they claim later we really only proved the gratuity.

THE COURT: In view of the acquittal on the other count?

MR. GOULD: The only problem with that, the only conspiracy to charge bribes is count 1, which is the Veteran's Administration. It was the FHA case, a totally unrelated case, except as a similar act as to count 1.

THE COURT: But I think Rose Cohen also got Christmas gratuities.

MR. GOULD: But she was with the FHA, the count which is the bribe would be V.A.

In any event, I have a hard time understanding Harrara which is one of the cases they cite. That was the case, if I remember correctly, where the only testimony by the Government was that he gave me X number of dollars to forget about his tax, overlook

the taxes.

There was absolutely no testimony by which a rational person could say it was a gratuity. It was either a bribe or nothing.

In this case, in the inference in court 2, they talk about also under this -- it wasn't like that. In fact, the Government did charge a gratuity. I'm not saying the Government could not have charged the bribe, I think a reasonable perhaps could have said it was a bribe. But, a reasonable man could have said gratuity. Harrara is a situation where it was either and it would not apply to count 2.

In addition, the acquittal on the Rose Cohen count; even the Pinkerton situation, where they are virtually identical, the Courts have said rightly or wrongly, that you can have a conviction and an acquittal on the other. That is when a conspiracy is established and a substantive count are sometimes close to indistinguishable. In this case they are not even close. We are not even dealing with the same subject.

Rose Cohen, it all went to the FHA and it was one bribe. Not even the same situation between Pinkerton and what happened here. The immediate situation where the substantive counts are really

-- you charge a conspiracy and the substantive counts are overt acts. They are also something that went on in the conspiracy. The bribe took place in count 1 and were not charging a substantive count. The gratuities given in count 4 were not charged as substantive acts and an acquittal was a bribe for count 3, which was dealing with the FHA and count 1 was dealing with the V.A.

So, to say that, because they acquitted on Rose Cohen, they must have not believed there were any bribes in count number 1.

Incidentally, if they didn't believe there were bribes in count 1, it's questionable they could have convicted whether that would have been proving substantially the same charge.

In any event, the two are unrelated and even if they were related, even Rose Cohen had been a V.A. official and Rose Cohen's testimony had been part of the conspiracy as well as the sutstantive counts, I think it's clear that would have no way led to the conclusion to the jury of acquittal on -- if they didn't believe there were any bribes given with count 1 and even if that had happened, that doesn't lead to the conclusion, I'm not really quite sure what defense counsel is arguing, that the bribes

aren't there, that we really didn't show fraud and therefore should have been acquitted on everything. There argument is they might have acquitted on bribes. There is no basis to find a giving of a bribe, therefore there should be an acquittal on the whole thing.

You know, I would argue the gratuities and the reference to the Christmas gifts, the bribes were payoffs for the assignment of these and there were some that were in between. For instance, the aiding abetting, the paying of the bribe on the property. It is questionable whether some of the people that were given money and not asked anything in return, like Kessler, others were given more direct bribes, but I can't see the relevance of that at all.

So, to have the whole count dismissed, I just can't follow any of the four or five steps.

THE COURT: What is count 4, we are discussing count 4?

MR. GOULD: They move to have count 1 dismissed, as I understand it, on the grounds if they acquitted on the Rose Cohen count, this was step one, they must have not believed the bribe. Therefore, since bribes were charged in count 1 and only count 1, not in count 4, therefore the jury must have found that there were no bribes given in count 1.

But they convicted because they found that gratuities were given in count 1. The next step, defendant makes the Harrara type of reasoning is that there was no basis for finding gratuities being given, either bribes or knowingly, and they didn't find bribes.

MR. WALLACH: Then you also have to acquit on the gratuity part of count 1 and throw the whole thing out. The only problem with that is, the one that I mentioned, they state on the bottom of number 10, for instance since the defendant was acquitted of the substantive count, based on the bribe, remember it is difficult to understand how the conspiracy count charging bribery can stand.

The only conspiracy count charging bribery was count 1, which was the V.A. count. The only substantive count was thrown out, count 3 was the FHA count.

My point, even if count 3 had been a V.A. count and had been part of the evidence going to count 1, an acquittal on count 3 would not necessarily mean the jury didn't find bribes on count 1. I would argue further if the jury didn't find bribes on count 1, there was evidence of gratuities. So, that you do not have a Harrara situation where you say the

jury believes there was testimony of gratuities, it was either a bribe or nothing.

Now, I might be representing that argument, it's hard for me --

MR. GOULD: That is what I thought, they were arguing him to dismiss counts 1. If I misrepresented myself, I stand to be corrected.

MR. WALLACH: It's all right.

(Cont'd on next page.)

S;tr #2

MR. GOULD: And the only argument that is left, your Honor, is the argument on the prosecutorial delay which I have submitted numerous papers on and the Government made an offer of proof after the verdict came in as to the times when the various witnesses became available.

MR. WALLACH: May I be heard a second, Judge?

THE COURT: Certainly.

MR. WALLACH: This was done expeditiously, but I would just like to go back to the Ianelli issue. I understand your Honor's analogy about horizontal conspiracy, so that if people conspired to bribe and never committed the bribe, they would be indicted and convicted of conspiracy. I do not quarrel with that.

THE COURT: Or did succeed, if the conspiracy was among several people, that one or more or the other or both should give a bribe to a third party.

MR. WALLACH: That's the contention. As I understand it the theory of conspiracy, the Legislature had in mind that it is an agreement and all right, it may or may not be followed by overt acts, depending on what statute we are talking about.

But because it's a group enterprise and therefore possibly more of a menace to society than

the defendant's -- I'm sorry, an individual talking to himself, how would you like to break the law. That certainly is said when a person is convicted of bribery or the giving, because it's concerted acts between himself and the donor. Why should they have to revert also to a conspiracy.

The legislative conspiracy --

THE COURT: Would you say that again, because I honestly do not follow you.

MR. WALLACH: The way I understand a conspiracy, the theory of the legislative intention is that it may be a punitive crime. You said attempt and it may not result in a crime.

THE COURT: Success, it may sell.

MR. WALLACH: It may sell; therefore there is still going to be punishment for the offenders, because it is group action. You cannot conspire with yourself. Only a psychiatrist said you can, but it's not punishable.

Well, if Congress therefore is learning also to hit at the group or concerted activity, that requirement is certainly less in the case of a crime requiring two or more people to accomplish a substantive crime, bribing or a violation of the statute.

Now, in Ianelli you read it very carefully,

because they felt that it was a fruitless argument in view of Ianelli. I read that and I reread it, Ianelli, very carefully and Ianelli nowhere says we are now abolishing the wanton exceptions. Instead, just give a very good look at the history of how this came about. Then he said that they will not engage in any abstract reasoning, whether it's possible to conceive a conspiracy and substantive crime which requires two or more, he says they'll go to the legislative purpose.

He said we are leaving alone the other cases that Mr. Warrenton or Probiss -- Warrenton got his exception from. But what I'm relying upon, your Honor, very frankly, I tell you what I am stimulated by, by the dissenting opinion in Ianelli. Why, why not say all right, the person has been convicted of giving a gratuity, which requires two or more persons and a conspiracy to give gratuities --

THE COURT: I forget what Ianelli said.

Pardon me. Ianelli, 1955 in the code. That is dealing with organized crime. You must have five or more people engaged in a gambling business in violation of State law and they make it continue for 30 days. Then they are not now guilty of a Federal felony, maintaining Ianelli in the gambling business. So,

the issue arose when the Department of Justice would indict an offender under 371, then they would also say 1975.

So, an attack was made on how both those sections could co-exist, how could a person be convicted of conspiring when it requires two or more and at the same time in conspiring to engage in a crime which requires five or more. They of course relied on Warrenton's decision. I think the circumstances were slightly different.

The next case was the United States against Becker, a gambling case and it says both sections can co-exist, although you require two persons.

MR. WALLACH: What they held is they can --

THE COURT: Co-exist.

MR. WALLACH: Because of the Congressional intent. That's what Justice Powel said.

THE COURT: Mr. Gould was saying verbatim from the statute, I once took it but I'm afraid I'm having difficulty with English. I don't think that is what I gather.

He said Warrenton's exception is destroying and not preserving Mr. Ianelli. Justice Powel said they are not going into the issues that gave rise to Warrenton's exception. He said it's not a theoretical

problem. It's one of legislative intent.

MR. GOULD: Your Honor, I think it perhaps is a misnomer to talk about Warrenton's exception and it's not an exception as if I think as we think of it, what they are saying was, I think, what his objection was was this; it was virtually the identity of the act. If you are indicting somebody for conspiracy when, in order to commit the substantive act, he would have to do the same thing, in a sense it's not an exception to anything.

This makes it sound like somebody was offended, he is merely saying you are in fact calling two things the same name.

I think since the Legislature, when it acted upon this, was aware that there was a conspiracy statute, general conspiracy statutes and there are also specific conspiracy statutes. Unless there is language to that effect, that would lead one to believe they didn't want to limit it to merely a substantive count and in Section 201, the statute, you don't have any language or talking about getting together.

Now admittedly you have to get together with somebody to commit a bribe. But, if you are talking about whether it was the legislative intent to limit

Section 201 to substantive counts, there was no language of any kind, confederate, agree or any type of the conspiracy language that would even hint at that.

I would even go further and say, since the legislators were well aware of the conspiracy statutes, that if they wished to do so, to limit the application of the statute, they would do so.

THE COURT: Isn't this a great deal closer to Mr. Wallach's idea, to the fairly conventional aspects of the taxpayer and the accountant who conspire to get together to bribe the Internal Revenue agent, who was conducting the audit? Only unknown to them the first suggestion of a bribe was reported to his superiors. The bribe is never actually given, but they get right up to the point of giving the bribe and at that point they are arrested.

Here, you have a clearcut conspiracy to bribe an Internal Revenue agent. You'll not have the giving, a particular overt act of consummation of the crime intended to be committed.

That would be an independent conspiracy between the briber and the bribee. Because, that is not the conspiracy that you are talking about. But, it certainly can happen.

MR. WALLACH: May I?

THE COURT: Yes.

MR. WALLACH: Well, your HOnor, except what I was trying to bring out before, let's assume that I am wrong --

THE COURT: You see, if you are talking about count 1, count 1 alleges a conspiracy in amongst a whole raft of people. Only two of whom I think were employees of the government, not the state.

MR. GOULD: Two of the witnesses were employees of the government.

THE COURT: I think in the charge of the indictment only two were.

MR. GOULD: There was one for the state --

THE COURT: Who broker or builders, whatever you want to call them.

MR. GOULD: Salley McDaniel.

THE COURT: They were employees of the business firm. Mr. Rosenbaum, and at the tail end of the list of people, just before the others went to the Grand Jury, unknown thereto, there were two or three employees of the government.

It is alleged that the conspiracy was a conspiracy amongst all of them. The proof of people who were adduced, the people who were adduced proved

to be -- for instance, the lady with the unusual name?

MR. GOULD: Caprikie.

MR. WALLACH: She was in the other case.

THE COURT: And a big black man?

MR. WASHOR: Smith.

THE COURT: Smith. No wonder I forgot it.

MR. GOULD: Homberg.

THE COURT: And who is the only other one?

MR. GOULD: You are talking about the broker. I think there were 17 witnesses who gave testimony to count 1.

THE COURT: When they were all testifying to their complicity in a broad scale for a considerable part, depending on getting the right kind of reports from the right king of people to be arranged through different people in many departments.

So, I don't think that Ianelli has much to do with this case.

MR. WALLACH: Well, I just wanted to add that if a person, assuming it's valid for the Government to indict a person for the gratuity crime or the bribery crime and the conspiracy --

THE COURT: As I said it certainly is, in the circumstances in which there is a conspiracy, to give

a bribe or a gratuity and that was alleged and proved in my opinion, sufficiently to go to the jury.

We were not dealing with the case in which the plurality of participants derived solely from necessity of any bribe situation, which is what Warrenton would apply to.

There was no numerosity and it was absolutely essential to bring about a bribe, there was no such limitation of numbers here. That was not the concept of the conspiracy in either count of the conspiracy.

In count 4 the conspiracy was alleged to be one between Mr. Rosenbaum and the contractors in the firm who were to distribute the gratuities to the payees.

MR. WALLACH: I would like to let it rest at that, Judge. Did you rule on the Marion issue?

THE COURT: Marion?

MR. GOULD: Speedy indictment.

MR. WALLACH: Pre indictment delay.

THE COURT: No. You were ready, and you were too, remember? In light of what the evidence showed us, I think you are going to be the one who will best be able to present an argument on that point, you were at the trial.

MR. WASHOR: Yes Judge. Most assuredly I

was there.

First of all, it's been brought to my attention, before we go into an analysis of the application of the facts that I have been citing, Marion and the Marion decision, before I bring that to the Court's attention and interestingly enough it's been brought to my attention by cocounsel, that nowhere in the Marion decision was there a circumstance where the defendant was apprised of the investigation for that entire period of time. Directly apprised of the scope of the investigation against him. There were some newspaper articles that could well have alerted the defendant, but one of the features to be considered is apprehension and etcetra. That is kind of knowing that an investigation is launched or being conducted against an individual.

But the Court has indicated however, that in order to survive on the speedy trial or if I may call it a due process motion, you'd have to demonstrate a form a prejudice.

There was a good deal of what I categorize as anticipatory speculation, speculation as to what witnesses could have or would have testified to on behalf of the defendant.

One of the counts that the -- now deceased

witness would have added to the defendants case, it could have resulted in an acquittal. I suggest we not bother with that concept of it other than for what the overall picture might have reflected with the jury.

The gratuity count evolving from Mr. Carl of the FHA still remains a turning point in the defendant's side for the following reason:

The defendant has maintained, not on the stand, but in his pretrial application through affidavits, that he had loaned money to Mr. Carl on prior occasions. And that the loaning of the money in this particular instance was not on or before or quid pro quo, that is solely because of the status of Mr. Carl's position in the FHA in anticipation of receiving some favor in the future.

Mr. Carl has denied it on the witness stand nad it stands uncontroverted that -- at this point -- that he was ever at Mr. Rosenbaum's home or that he begged, if I may use that language, or pleaded for help, etectera.

The father-in-law of the defendant, notwithstanding the nature of the relationship, is privy to a meeting at his house, that is the Rosenbaum's house. While he might well be designated an interested wit-

ness, to say the very least, if because of his relationship to the accused and his concern with the outcome of the trial could well have buttressed the defense's position. Yes, I gave the money but because he was not a public official, because I would have anticipated something in the future. It was the defendant's position of testifying, coming forward to meet that count of the indictment and he has no living witness available.

On the very date the defendant was arraigned, which was November of 1975, I think most sincerely his death is to the detriment of the accused as to that count.

Neal Lustig, brother-in-law of the defendant, again to categorize correctly, so I think as an interested witness because of the relationship and because there was concern with the outcome of the trial, would have been in a position to testify as to certain transactions relative to that which was established at the trial.

I say to this Court candidly that there is no one witness now deceased that could have, like the six million dollar man, could come forward on behalf of Mr. Rosenbaum and destroy the Government's case in its entirety. I do say to the Court that the two or

three witnesses that, by graces beyond anyone's control, expired at the time of the filing of this instrument, the indictment.

That it put the defendant in a position where he was left alone to come back at the evidence against him.

THE COURT: To show what?

MR. WASHOR: To show that there was not a wilfull, deliberate intention --

THE COURT: By saying what?

MR. WASHOR: By demonstrating that they were privy at different times and places to meetings with different people who were the very witnesses who testified in this court where there were no signs of impropriety. You remember the Government referred here, as I understand the prosecution --

THE COURT: For instance, as to the Carl matter.

MR. WASHOR: Not only the Carl matter, the conspiracy aspect also. You see, this case could well have had a defense, not by the defendant testifying alone, but by way of some of these witnesses that could have demonstrated, could have, because that's the best we can do at this stage, that there may well have been improprities directly and right under the

nose of Rosenbaum.

Rosenbaum did not acknowledge them, but he wasn't working with that in this indictment. The indictment does not charge passive conduct by any stretch of the imagination. This indictment charges active conduct by Mr. Rosenbaum.

We could not defeat a passive conduct of impropriety. So, that if the Government could have and in fact, showed through its argument at the trial that there was widespread improprieties through the other people in the industry, if the cross examination demonstrated there was widespread improprieties throughout the industry, that Mr. Rosenbaum was not to be held responsible for the widespread improprieties, even within his own company and in the industry.

He was charged with specific acts of improper conduct. That would have been met by Mr. Solomon. That could have been met by Neal Lustig as to the relationship between the Smiths and Farnellas.

Now, we were not in a position, and I say this most candidly, to come forward with witnesses to combat each and every bit of the testimony that was proffered during the course of the prosectuion's case.

But, may I most candidly suggest to your Honor, I'm not sure that in a multiple count indictment

involving various issues and various numbers of witnesses produced by the Government and prosecution, that the defendant is in a position to combat each and every witnesses' testimony.

A defense does not have to go that far. It isn't a question of calling twenty to match twenty witnesses of the Government or ten witnesses by the defense to testify as to each of the two of the witnesses.

So, that you have got a equation.

It is a question of presenting a defense to show the lack of participation by the defendant in the activity of impropriety.

The acquiescence by Mr. Rosenbaum, the fact that he should have, could have known some of the improprieties, his conduct possibly of letting that which was a possible impropriety go by when he should have taken affirmative steps, all go to morality and to the potential and other crimes he could have been charged with. But not those charges in this indictment.

The Smiths, the Farnellas, did not indicate passive conduct by Rosenbaum constituting a crime. It was statements made by these people to Rosenbaum in the presence of a witness that could have been

brought out by the defense, demonstrating prejudice on behalf of the defense. I honestly believe it to be one of the most facinating of legal issues because it imposes upon pure conjucture and I suppose, depending upon whether or not the conjecture reaches the heights of plausibility, the decision could be rendered.

Four years or three and a half years having elapsed, where the government has more than ample time, more than ample quantity and quality of evidence to bring back an indictment, spells it out.

We just received a bonus to our argument with the witnesses during this trial.

The same argument could well be argued if they died two days after the instrument is filed. It is not the date per se, the death, it's not the deaths per se that gives us the prejudice. It's the fact that the time period has gone by without the Government coming forward to really explain why they waited so long.

I do not understand how the Government can be put into a position where they can just rely on the fact that their coming in with, within the statute of limitations. It seems to me that the due process requirement of lodging an instrument against an

accused is not pitted against the statute of limitations. That was its import, but it's for other reasons.

There would be no reason of having a due process on delay. Then there would be no reason to show prejudice.

The Government can take the position that we are coming within the five-year period on a felony.

So, I suppose we don't have to show it, but we ought to be more sure, we have a right, we have to wait for the last moment, so if there are more witnesses, that is not the due process argument of bringing a maybe to trial.

That is not what it is all about.

Whether it is by design, whether it is by accident or by inadvertence, a man should not have to wait three and a half, four years when he's apprised at the very inception that he's a target of investigation when it effects the very judicial process, the reason of giving a man an opportunity to be confronted and defend himself, he cannot defend himself four or five later, even four years and three hundred and twenty nine days later. It's just too much to impose upon an individual. It cannot be met.

It is not as if the Government, six months prior to the expiration of the statute of limitations came upon the existence of a crime and they were forced to move in an expeditious manner so they can come within the statute of limitation.

This is a question of the Government having this information, a tape recording, cooperative witnesses, transcripts back in 1972.

What more did they need on the Carl count? When did they get Rose Cohen? They didn't have enough witnesses to spell out the conspiracy? Yes, they gained more witnesses. They found more. But, it isn't the quantity. Why didn't they come and charge him, bring at least the filing of an instrument at a point where he could have battled it and not wait for three and a half, four years? It is just too much.

Notice, Judge, I'm not arguing innocence, I am arguing guilt. I am arguing what the due process motion is really about.

It is not a question of guilt or innocence, because if we had to turn on that, we will would have no way of knowing when the person who sits in judgment of an individual above and beyond would take

him and disturb the factfinding process of a jury.

MR. GOULD: Are you finished?

MR. WASHOR: I am completed.

(Cont'd on next page.)

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MR. GOULD: Well, Your Honor, for the most part I think there is a repetition of the argument that we have made on paper. I have answered specifically each witness that they drew up before and I would like to say that legally it appears, particularly from the recent Second Circuit case, which I say I don't have with me, but I handed a copy to Mr. Washor and the clerk.

Number one, they have to show the Government's misconduct. That seems clear, at least by the Second Circuit's interpretation, that is shown. You have to show prejudice. I think it is clear that was not shown.

Number three, if even you show prejudice in the Government's delay, which we have done, against any delay, we have accounted for what we have done.

Now, as a matter of affidavits, I think that Mr. Washor does not say the father-in-law told him the stories, even though Mr. Washor was well aware of the charges and what the counts were and has proved himself I think it was clear, he was a silent attorney. None of these statements were taken down by any of the witnesses. There is no record of the statements.

There is nobody else there, even though they were clearly material to the defense, earlier and incidentally, the fact that the defendant knew about the

charges or possible investigation cuts in our favor rather than somebody four years later finding out he's got to start gathering information .

This man knew from the very point, from the very beginning of the investigation and he was informed he was a target. There's no question in the Government's mind there were many statements in the affidavits that were false.

One of the things the Government intends to do is put some of the feelings in a letter, because they are still very bothersome, that those are false affidavits, and they have remained uncorrected and to hear them rely on them, I don't mean Mr. Washor knows they're false, I am talking about Mr. Rosenbaum knowing they are false and the Government is looking into it, because there were possible Grand Jury leaks as well as some other Government documents which was some how transferred out of the office.

THE COURT: We have answered those specifics in our papers. We pointed out the whole thing with Holmberg, it was actually impossible the way it was said. That Don Carroll mentioned something about the loaning of money, if Rosenbaum personally knew Mr. Carroll, he could have called each of them previously to his office and saying, "Don't you remember or don't you

remember the loan and everyone told me that I told them that Steve never loaned him money." You remember that, you testified to that and the answer was no. I wasn't there all the time, but I never did. Mr. Allen Stein and Lærner and everyone said no such thing happened. You heard the voice of Don Carroll on the tape when he was supposed to call Rosenbaum to set up an arrangement. At the time he had known Mr. Rosenbaum was going to claim that he had been to his house for a defense. He doesn't know how many kids Rosenbaum has. He doesn't know what the house looks like. I would challenge Mr. Rosenbaum and tell me how many children Mr. Carroll has. He claims in the affidavit that these were close friends. They had been out socially and he has loaned money to him. None of this ever happened.

Many of the things in the affidavits never happened and I am still stating that maybe because it is infuriating at this late stage that they are still relying on these things from a legal point of view. I don't think that it makes much of a difference. Each and everything alleged in those affidavits was true, it didn't cause a prejudice. In fact, a lot of the things that are in the affidavits, I might have been willing to stipulate. I think that they were most helpful to us.

The statement certainly there's nothing in it that

even hence that any Government intentional misconduct in awaiting andsaying maybe if we wait for four years we can grab Rosenbaum, of course the Government, you know, the only prejudice that was suffered by anybody was the Government's losing some witnesses, the witness who would have been the frame work of the case. As a matter of fact we were instructing the entire case around him. I see no prejudice to the defense. I think it would be remarkable and coincidental, given the multitude of things that were testified to, literally hundreds of incidents that all of the people who could have helped the defendant, I think maybe fourteen or fifteen mentioned the defendant must have come in contact with hundreds and hundreds of people, but, who could help the defendant.

Everyone who helped the defendant didn't give Mr. Washor a statement that was written down. Not one of the people survived who could have helped the defendant, even though he met withhundreds and hundreds of people and different transactions, as he testified to, was in touch with various places and a huge number of people.

Mr. Holmberg tells Nel Lustig that he was going to lie for the Government, but doesn't tell his nice close friend who is still alive and some people are

going close to Mr. Rosenbaum that Holmberg knew better than he knew Lustig.

I am actually quite outraged by this still happening at this time.

I can understand it before trial, I can understand the man's attitude of the charges he was facing and certainly when things built up. Not that we ever condone false statements, but we are still relying on them at this stage. Games are still being played, we have been promised cooperation that hasn't been there.

MR. WASHOR: This is not the forum nor the time, I think to discuss that. I think that would be very unfair to go into that at this time.

THE COURT: That's right.

MR. GOULD: Your Honor, I'll just finish by just saying I don't believe there has been anything to the pretrial delay argument. There is nothing raised that is new. Everything has been answered in the papers and we have made an answer as to when various witnesses were available.

I would like to put on the record, without going into specifics, Your Honor, I don't know when the sentencing panel is going to meet, but I ask permission to write a supplemental letter, because when I first spoke to the Probation Department, they are under a mis-

6 impression and I would like to correct them on the record and state that in the Government's case that is I don't know what probation has the burden of doing --

MR. WASHOR: May I ask again what this has to do with the motion?

MR. GOULD: I'm merely putting it on the record so I have informed defense counsel that I am going to write a letter what I told to Probation Department originally was based on my misunderstanding of many things. I just want you to know about it, and I want it on t he record.

THE COURT: I'll see the presentence report.

MR. GOULD: Certainly.

MR. WASHOR: Your Honor, may I comment regarding the due process application?

First of all, so that the Court is aware, I would like to brief that, about the defense attorneys taking statements from prospective witnesses unless he has the benefit of seeing what the accused is charged with.

With all due respect, I am not apologizing to the Court, but to obtain a statement from a potential witness other than having a confidential relationship with the defendant, who is telling the lawyer, and this is a question of practicality. We've got this witness or

this witness that will be able to testify will testify about Don Carroll and he will be able to testify about certain brokers [illegible]. You can't take statements from these people, and there is no necessity to taking statements from the party, unless there is an instrument showing that it is part of the charge, what the charges are all about.

June of 72, Rosenbaum, represented by counsel, is told that he will be indicted and you will be indicted when I complete my military obligation, courtesy has been extended. I find no fault with the extension of the courtesy --

MR. GOULD: When who completes what?

MR. WASSER: Well, let's get to the District Attorney, Mr. Grundwall. At that time it appeared to be official for Rosenbaum. With the early part, mid 1972, he had conferences with respect to the Assistant that handled that case and whatever the results were of their tempered negotiations as evidenced by Mr. Grundwall's affidavit I believe. He told Mr. Rosenbaum in June, "You are going to be indicted by the Federal Government. There is a courtesy being given to me so I can be present for the indictment. I've got my military leave. I think it's six months, a program and I have a vacation that will also involve them."

So the defendant, some time in the beginning of August, 1972, had every reason to believe that his attorney and the Assistant United States Attorney, Chief at one time if I remember correctly, had intelligence and properly informed him of the Government's intention.

So, from August, 1972, he has had to live with the indictment coming down soon, some day, from where, when the Government gets good and ready? What will he be indicted for? There's an FHA investigation. We also know there are V.A. investigations. Whether at this point he was told that there are tapes reflecting certain conversations regarding Berman and the other undercover agent, on a bribery charge, it is a most serious matter. How do you look at it. Are there tapes with Don Carroll or not. I don't believe that it was disclosed to his attorney.

What were the transactions on? What did he have to face from August, 1972, to November, 1976? Whatever the attorneys attempted to do during the interim, to negotiate, -- there's just no reason to subject a human being to that kind of delay, to put him in a position of a multi-count indictment with 24 witnesses coming forward with the benefit of looking at the reports, benefit of seeing their statement taken during the course of the investigation with their prior testimony at

particular trials.

They have the advantage of having their recollection refreshed as to dates, times and incident, having physically within their grasps so that they can reasonably and accurately, and a proper way to prepare a case from either side, to put a defendant in that position, that is basically unfair. Isn't that rhetorically the essence of due process motions, that there has been an unfairness created, that the defendant has not -- because of his inability to be able to protect himself for the hiatus of time. Mind you, this is not the type of circumstances where the defendant has taken off or was vacationing during this entire period of time and enjoying the sun and relaxing and living a normal life. The longer they do not indict I suppose the better off I am. That is not the fact.

How do you prepare for a trial. Courts allow a reasonable time for the defense to prepare. Do the courts enforce an unreasonable period of time for the prosecution to prepare or turns out to be an absolute onslaught and I am again -- I am not commenting on guilt or innocence. I think it is the essence of due process motion that --

MR. GOULD: I have no further argument, Your Honor.

THE COURT: I will reserve decision on the motion. I'm afraid I'll not be able to grant these motions in any respect. I'll go over the papers again and reread Ianelli. I'll go over the affidavit material and the motions based on the lapse of time between the offense and the indictment.

MR. WASHOR: Thank you for your courtesies extended, Your Honor.

(Whereupon, these proceedings were concluded.)

* * * * * * * * * * *

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 20 day of August, 19 76 at No. 225 Cadman Plaza East. Bklyn, NY deponent served the within Appendix upon U.S. Atty., Eastern Dist. of N.Y. herein, by delivering a true the Appellee copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 20 day of August 19 76

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1973 1977